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§ 1. Definition and distinctions

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West's Key Number Digest, States 1

A state is a political community of free citizens, occupying a territory of defined boundaries, organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed.[1] The term "state" is restricted to members of the Federal Union[2] although it may have a broader connotation in particular statutes.[3] However, the word "state" is not construed to include territories, if the statutory purpose is to protect state sovereignty, and that purpose is not furthered by the broader construction.[4]

A state is a legal entity, which can function only through its officers and agents or other qualified authorities.[5]

The ordinary meaning of the term "state" envisions an entity having statewide jurisdiction rather than one having local or limited jurisdiction.[6] The term "state" generally does not include political subdivisions.[7]

Footnotes

1 Coyle v. Smith, 221 U.S. 559, 31 S. Ct. 688, 55 L. Ed. 853 (1911).

2 Downes v. Bidwell, 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901).

3 Mora v. Mejias, 206 F.2d 377 (1st Cir. 1953) (suggesting that Puerto Rico, although not a state in the Union, would seem to have become a "state" within a common and accepted meaning of the word).

4 Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368, 69 S. Ct. 606, 93 L. Ed. 741 (1949).
As to the status of territories, see §§ 130 et seq.

5 Textron, Inc. v. Wood, 167 Conn. 334, 355 A.2d 307 (1974).

6 Monsanto Co. v. Cornerstones Mun. Utility Dist., 865 S.W.2d 937 (Tex. 1993).

7 Amphitheater Unified School Dist. No. 10 v. Harte, 128 Ariz. 233, 624 P.2d 1281 (1981); Monsanto Co. v. Cornerstones Mun. Utility Dist., 865 S.W.2d 937 (Tex. 1993) (statutory intent was to include only those entities having statewide jurisdiction).

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§ 2. Sovereignty

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West's Key Number Digest, States 1, 5(1)

States are not simply private citizens but are sovereigns[1] although the ultimate sovereign is the people.[2] States have inherent sovereignty to manage their affairs except to the extent that the requirements of the U.S. Constitution provide otherwise.[3]

The state, as sovereign, is "parens patriae,"[4] that is, guardian and trustee of its citizens.[5]

A State has wide authority to establish its state and local government as it wishes.[6] Federal legislation appearing to affect states' arrangements for conducting their own government should be treated with great skepticism and read in a manner that preserves a state's chosen disposition of its own power.[7]

States do not need, and may not attempt, to negotiate with other states regarding their mutual economic interests,[8] and one state's legislature may not dictate to other states the terms of economic competition.[9]

Footnotes

1 Shell Oil Co. v. Train, 585 F.2d 408 (9th Cir. 1978).
The rule of state sovereignty is both constitutional and statutory. Mullins v. State, 320 S.W.3d 273 (Tenn. 2010).

2 State ex rel. West Virginia Citizen Action Group v. Tomblin, 227 W. Va. 687, 715 S.E.2d 36 (2011).

3 Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943); Madden v. Commonwealth of Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940).

4 Commonwealth of Kentucky v. State of Indiana, 281 U.S. 163, 50 S. Ct. 275, 74 L. Ed. 784 (1930).
As to the right of a State to bring actions as parens patriae, see §§ 94 et seq.

5 Heim v. McCall, 239 U.S. 175, 36 S. Ct. 78, 60 L. Ed. 206 (1915).

6 McMillian v. Monroe County, Ala., 520 U.S. 781, 117 S. Ct. 1734, 138 L. Ed. 2d 1 (1997).

7 Nixon v. Missouri Municipal League, 541 U.S. 125, 124 S. Ct. 1555, 158 L. Ed. 2d 291, 195 A.L.R. Fed. 699 (2004).

8 Granholm v. Heald, 544 U.S. 460, 125 S. Ct. 1885, 161 L. Ed. 2d 796 (2005).

9 Coca-Cola Co. v. Harmar Bottling Co., 218 S.W.3d 671 (Tex. 2006).

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§ 3. Sovereignty—Within territorial limits

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West's Key Number Digest

West's Key Number Digest, States 1, 5(1), 12

Except to the extent that they are subject to the prohibitions of the Constitution, or that their action conflicts with the powers delegated to the federal government or with congressional legislation enacted in the exercise of those powers, state governments are sovereign within their territorial limits[1] and have exclusive jurisdiction over persons and property located within those limits.[2] However, a State may legislate only with reference to its own jurisdiction[3] and may not, by its laws, directly affect, bind, or operate on property or persons beyond its territorial jurisdiction.[4] Thus, the jurisdiction of a state does not ordinarily extend beyond its boundaries[5] although it may sometimes do so in the case of concurrent jurisdiction over a boundary river.[6]

There is a strong presumption that a state statute applies only domestically[7] and generally does not have extraterritorial effect.[8] In this regard, a state's laws operate in other states only as allowed by those states or by comity.[9]

Ownership by a state of property located in another state is the same as that of a private corporation.[10]

Observation:

A State does not acquire power or supervision over the internal affairs of another state merely because the welfare and health of its own citizens may be affected when they travel to that state. In this regard, while a State may seek to disseminate information to enable its citizens to make better informed decisions when they leave, it may not, under the guise of exercise of internal police powers, bar a citizen of another state from disseminating information about an activity that is legal in that state.[11]

Footnotes

1 Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943).

2 McDaniel v. McElvy, 91 Fla. 770, 108 So. 820, 51 A.L.R. 731 (1926); State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546 (1950); Leighton v. Roper, 300 N.Y. 434, 91 N.E.2d 876, 18 A.L.R.2d 537 (1950).

3 Coca-Cola Co. v. Harmar Bottling Co., 218 S.W.3d 671 (Tex. 2006).

4 Deur v. Sheriff of Newaygo County, 420 Mich. 440, 362 N.W.2d 698 (1984).

5 Adventure Communications, Inc. v. Kentucky Registry of Election Finance, 191 F.3d 429 (4th Cir. 1999); State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546 (1950); Leighton v. Roper, 300 N.Y. 434, 91 N.E.2d 876, 18 A.L.R.2d 537 (1950).
As to the territorial and jurisdictional limits of state taxing power, see Am. Jur. 2d, State and Local Taxation §§ 1 et seq.

6 § 35.

7 K-S Pharmacies, Inc. v. American Home Products Corp., 962 F.2d 728 (7th Cir. 1992).
As to interpreting statutes, generally, see Am. Jur. 2d, Statutes §§ 1 et seq.

8 Doctors Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Compensation Trust Fund, 371 S.C. 5, 636 S.E.2d 862 (2006).

9 Adventure Communications, Inc. v. Kentucky Registry of Election Finance, 191 F.3d 429 (4th Cir. 1999); Republic Properties Corp. v. Mission West Properties, LP, 391 Md. 732, 895 A.2d 1006 (2006).
As to state cooperation and reciprocity, generally, see § 7.

10 State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546 (1950).

11 Bigelow v. Virginia, 421 U.S. 809, 95 S. Ct. 2222, 44 L. Ed. 2d 600 (1975).
As to a state's authority over its citizens when outside of the state's boundaries, generally, see § 4.

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§ 4. Sovereignty—Authority over citizens or residents when outside state

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West's Key Number Digest

West's Key Number Digest, States 1, 5(1), 12

The authority of a state over its citizens is not terminated by the mere fact of their absence from the state.[1] Thus, certain police power measures, such as the regulation of fishing in the marginal sea or the dredging of submerged lands, may be enforced by a State against its citizens beyond its boundaries.[2]

It is not a violation of the 14th Amendment for a state court that has immediate personal jurisdiction of a person because of his or her presence within the state to order him or her to do an act outside it.[3] However, this doctrine may not be used to punish a state's own citizens for doing, in exclusively federal territory, what was there lawful under federal law.[4]

Footnotes

1 Milliken v. Meyer, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A.L.R. 1357 (1940).

2 U.S. v. States of La., Tex., Miss., Ala. and Fla., 363 U.S. 1, 363 U.S. 121, 80 S. Ct. 961, 4 L. Ed. 2d 1025, 4 L. Ed. 2d 1096 (1960), opinion supplemented, 382 U.S. 288, 86 S. Ct. 419, 15 L. Ed. 2d 331 (1965).

3 People of State of N. Y. v. O'Neill, 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959).

4 Pacific Coast Dairy v. Department of Agriculture of Cal., 318 U.S. 285, 63 S. Ct. 628, 87 L. Ed. 761 (1943).

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§ 5. Compacts between states and United States

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West's Key Number Digest

West's Key Number Digest, States 4.19

A state and the United States may enter into a compact.[1] The authority of a state to enter into a contract with the United States is derived from the U.S. Constitution and cannot be inhibited by any provision of the applicable state constitution.[2] A federal-state compact, like an interstate compact, is enforceable as a matter of federal law because it derives its powers from Congress and may be amended or repealed only with the consent of Congress.[3]

Observation:

The Compact Clause of the U.S. Constitution, which forbids any state of the Union to enter into any agreement or compact with another state without the consent of Congress,[4] does not apply to agreements between the federal government and the states.[5]

Footnotes

1 James v. Dravo Contracting Co., 302 U.S. 134, 58 S. Ct. 208, 82 L. Ed. 155, 114 A.L.R. 318 (1937).

2 Antle v. Tuchbreiter, 414 Ill. 571, 111 N.E.2d 836 (1953).

3 Aged Hawaiians v. Hawaiian Homes Com'n, 78 Haw. 192, 891 P.2d 279 (1995).

As to compacts between states, see §§ 9 et seq.

4 § 9.

5 Blango v. Thornburgh, 942 F.2d 1487 (10th Cir. 1991).

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§ 6. Statutes or ordinances as affecting states

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West's Key Number Digest

West's Key Number Digest, Statutes 233

A state is bound by a statute enacted for the public good or to prevent injury, but not by general statutes, unless the statute extends to it by express words.[1] Thus, a statute having the effect, in general terms, of restricting or limiting rights or interests or imposing liabilities does not apply to the State unless the State is named expressly or by necessary implication,[2] or the statute manifests a clear and indisputable intent that the State is to be bound.[3]

The presumption of a legislative intent to exclude the State from the operation of a statute is based on the view that laws are ordinarily made for governing citizens and not the State.[4] Thus, the term "person" in a statute generally does not include the State and its agencies and instrumentalities.[5] However, there is no general principle that courts should not construe federal regulatory enactments as applicable to states unless Congress actually uses the word "state."[6]

Because courts will not assume legislative intention on the part of a city council to interfere by ordinance with the acts of the general government, a state is not bound by the provisions of a municipal charter or ordinance unless mentioned specifically or by necessary implication.[7]

Footnotes

1 Nardone v. U.S., 302 U.S. 379, 58 S. Ct. 275, 82 L. Ed. 314 (1937); U.S. v. Stevenson, 215 U.S. 190, 30 S. Ct. 35, 54 L. Ed. 153 (1909); Chun v. Board of Trustees of Employees' Retirement System of State of Hawai'i, 106 Haw. 416, 106 P.3d 339 (2005); State ex rel. Hamilton v. Standard Oil Co. of California, 190 Wash. 496, 68 P.2d 1031 (1937).

As to statutes, their operation, and effect, generally, see Am. Jur. 2d, Statutes §§ 1 et seq.

2 Washington Suburban Sanitary Com'n v. Phillips, 413 Md. 606, 994 A.2d 411 (2010); State ex rel. Williams v. Glander, 148 Ohio St. 188, 35 Ohio Op. 192, 74 N.E.2d 82 (1947); Hutchinson v. Krueger, 1912 OK 368, 34 Okla. 23, 124 P. 591 (1912).

3 Washington Suburban Sanitary Com'n v. Phillips, 413 Md. 606, 994 A.2d 411 (2010).

A traditional rule of statutory construction is that, absent express words to the contrary, government agencies are not included within the general words of a statute, but this rule does not override positive indicia of a contrary legislative intent. Wells v. One2One Learning Foundation, 39 Cal. 4th 1164, 48 Cal. Rptr. 3d 108, 141 P.3d 225, 212 Ed. Law Rep. 376 (2006), as modified, (Oct. 25, 2006).

4 Lewis and Clark County v. Industrial Acc. Board of Montana, 52 Mont. 6, 155 P. 268 (1916).

5 Washington Suburban Sanitary Com'n v. Phillips, 413 Md. 606, 994 A.2d 411 (2010); Simonian v. University and Community College System of Nevada, 122 Nev. 187, 128 P.3d 1057 (2006).

A statute providing that the term "person" may be construed to include the United States, the state, or any state or territory permits but does not compel such a reading. Segaline v. State, Dept. of Labor and Industries, 169 Wash. 2d 467, 238 P.3d 1107 (2010).

6 Case v. Bowles, 327 U.S. 92, 66 S. Ct. 438, 90 L. Ed. 552 (1946).

7 In re Means, 14 Cal. 2d 254, 93 P.2d 105, 123 A.L.R. 1378 (1939).

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§ 7. Generally

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West's Key Number Digest, States 4.19, 5(1), 6

Specific constitutional authorization is not required for arrangements among the states; they must be upheld unless clearly incompatible with the U.S. Constitution.[1] Thus, states are free to accord each other immunity or to respect any established limits on liability.[2]

CUMULATIVE SUPPLEMENT

Cases:

Stare decisis did not warrant upholding Supreme Court's decision in *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416, which held that the Constitution did not bar private suits against a State in the courts of another State; although some plaintiffs have relied on *Hall* by suing sovereign States, *Hall* failed to account for the historical understanding of state sovereign immunity, namely that States retained immunity from private suits, both in their own courts and in other courts, *Hall* also failed to consider how the deprivation of traditional diplomatic tools reordered the States relationships with one another, and it stood as an outlier in the Supreme Court's sovereign-immunity jurisprudence. Franchise Tax Board of California v. Hyatt, 139 S. Ct. 1485 (2019).

District Court would not apply doctrine of constitutional avoidance to review provision of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) granting Secretary of Homeland Security authority to waive all legal requirements that the Secretary determined were necessary to ensure expeditious construction of barriers and roads under the provision of IIRIRA requiring the Secretary to take such actions as may be necessary to install additional physical barriers and roads in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States; District Court did not have serious constitutional doubts as to constitutionality of the provision and prior challenges to the initial amendment of the

provision broadening the Secretary's waiver authority in 2005 had been upheld as constitutional. 8 U.S.C.A. § 1103 note. In re Border Infrastructure Environmental Litigation, 284 F. Supp. 3d 1092 (S.D. Cal. 2018).

[END OF SUPPLEMENT]

Footnotes

1 People of State of N. Y. v. O'Neill, 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959).
As to the Compact Clause, generally, see § 9.
As to the doctrine of comity, generally, see Am. Jur. 2d, Conflict of Laws § 11.

2 Nevada v. Hall, 440 U.S. 410, 99 S. Ct. 1182, 59 L. Ed. 2d 416 (1979).

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§ 8. Reciprocity

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West's Key Number Digest, States 5(1)

"Reciprocity" denotes the relationship between states if each gives citizens of the other certain favors or privileges that its own citizens enjoy in the other state.[1] A reciprocity statute exempts nonresidents from certain requirements provided that the states of their residences reciprocate and grant a like exemption to citizens of the enacting state.[2]

A reciprocity statute does not violate the Compact Clause of the U.S. Constitution.[3] The mere fact that such statutes or regulations affect some groups of citizens differently than others or result in incidental individual inequality does not render them invalid.[4]

Footnotes

1 Arizona State Bd. of Accountancy v. Cole, 119 Ariz. 489, 581 P.2d 1139 (1978).

2 Bode v. Barrett, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

3 Bode v. Barrett, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).
As to the Compact Clause, generally, see § 9.

4 Hawkins v. Moss, 503 F.2d 1171 (4th Cir. 1974).

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B. Compacts, Cooperation, and Reciprocity Among States

§ 9. Compacts between states, generally; effect of Compact Clause

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West's Key Number Digest

West's Key Number Digest, States 6

A "compact" is a contract between two sovereigns.[1] An "interstate compact" arises when two or more states enact essentially identical statutes that govern an area of mutual concern and define the compact, its purposes, and its policies.[2]

The United States Constitution, in what has been called the "Compact Clause,"[3] prohibits any state from entering into an agreement or compact with another state without the consent of Congress.[4] Congress may give express or implied approval to an agreement that states have already made or pass legislation authorizing joint state action in advance.[5] Subject to the consent of Congress, states may enter into any compact or agreement with each other that they see fit.[6]

Interstate compacts bind the citizens of all of the signatories.[7]

States that are parties to a compact assume, by accepting and acting under it, the conditions that Congress has attached.[8]

A "necessary business" clause of a state constitution does not authorize the Governor to execute compacts contrary to the expressed public policy of the state or to create exceptions to the law.[9]

CUMULATIVE SUPPLEMENT

Cases:

Congress's approval of a contract, pursuant to the Compact Clause, which prohibits states from entering into compacts with other states without the approval of Congress, serves to prevent any compact or agreement between any two States, which might affect injuriously the interests of the others. U.S.C.A. Const. Art. 1, § 10, cl. 3. Texas v. New Mexico, 138 S. Ct. 954 (2018).

Supreme Court's authority to enforce interstate compacts includes the ability to provide the remedies necessary to prevent abuse; the Court may invoke equitable principles, so long as consistent with the compact itself, to devise fair solutions to the state-parties' disputes and provide effective relief for their violations. U.S.C.A. Const. Art. 3, § 2, cl. 1 et seq. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

Interstate compacts are construed as contracts under the principles of contract law. Tarrant Regional Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013).

Interstate compact entity's sovereign immunity was waived for purposes of school bus driver's personal injury claim, where school bus driver alleged she sustained injuries due to the negligent operation of one of the interstate compact entity's buses. Mo. Ann. Stat. § 537.600.1(1). Moore v. Bi-State Development Agency, 609 S.W.3d 693 (Mo. 2020).

Interstate Corrections Compact empowers New Jersey to enter into contracts with other states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. N.J.S.A. 30:7C–1 et seq. W.B. v. New Jersey Dept. of Corrections, 434 N.J. Super. 340, 84 A.3d 285 (App. Div. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Florida House of Representatives v. Crist, 999 So. 2d 601 (Fla. 2008).
A "compact" between states is a binding legal instrument that provides for formal cooperation between states and is both statutory and contractual. State v. Svenson, 104 Wash. 2d 533, 707 P.2d 120 (1985).

2 In re Adoption No. 10087 in Circuit Court for Montgomery County, 324 Md. 394, 597 A.2d 456, 15 A.L.R.5th 935 (1991).
Interstate compacts are formal agreements among states that have the characteristics of both statutory law and contractual agreements; they are enacted by state legislatures that adopt reciprocal laws that substantively mirror one another. In re Alexis O., 157 N.H. 781, 959 A.2d 176 (2008).

3 Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve System, 472 U.S. 159, 105 S. Ct. 2545, 86 L. Ed. 2d 112 (1985).

4 U.S. Const. Art. I, § 10, cl. 3.

5 Cuyler v. Adams, 449 U.S. 433, 101 S. Ct. 703, 66 L. Ed. 2d 641 (1981).

6 Com. of Virginia v. State of West Virginia, 246 U.S. 565, 38 S. Ct. 400, 59 L. Ed. 1272 (1918).

7 Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

8 Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275, 79 S. Ct. 785, 3 L. Ed. 2d 804 (1959).

9 Florida House of Representatives v. Crist, 999 So. 2d 601 (Fla. 2008).

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B. Compacts, Cooperation, and Reciprocity Among States

§ 10. Necessity of congressional consent to particular agreements or matters

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The Compact Clause[1] applies only to agreements that are directed to the formation of any combination tending to increase political power of the states, which may encroach on or interfere with the federal government's authority.[2] If a joint activity of the states does not encroach on or interfere with federal supremacy, approval by Congress is not required;[3] however, if the activity affects the federal sphere, Congress must authorize it.[4] The Compact Clause does not require congressional consent every time that states act through a multilateral agreement to create an active administrative body with extensive powers delegated to it by the states.[5] Also, if the creation of a bistate entity does not implicate federal concerns, federal consent is not required under the Compact Clause.[6]

The Federal Compact Clause reaches both "agreements" and "compacts," formal or informal.[7] The mere form of an interstate agreement is not dispositive, the relevant inquiry being of its potential impact on the federal structure; the mere existence of a federal interest or concern is irrelevant, absent a threat of encroachment or interference through enhanced state power.[8] The number of parties to an agreement is also irrelevant if the agreement does not enhance state power at the expense of federal supremacy.[9]

Congressional consent is not necessary with respect to every matter relating to or growing out of a congressionally approved compact.[10]

CUMULATIVE SUPPLEMENT

Cases:

Agreement for construction of new publicly owned bridge between United States and Canada, pursuant to statute authorizing state to enter agreement with Canada for construction of bridge, conditioned on its approval by Secretary of State, closely implicated the Federal Government's powers over foreign affairs and foreign commerce and, thus, agreement required congressional consent under the Compact Clause. U.S. Const. art. I, § 10; 33 U.S.C.A. § 535(a). Detroit International Bridge Company v. Government of Canada, 192 F. Supp. 3d 54 (D.D.C. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Art. I, § 10, cl. 3.

2 Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve System, 472 U.S. 159, 105 S. Ct. 2545, 86 L. Ed. 2d 112 (1985); U. S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978); McComb v. Wambaugh, 934 F.2d 474 (3d Cir. 1991); Colbert v. U.S., 601 A.2d 603 (D.C. 1992).

3 Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Md., 706 F.2d 1312 (4th Cir. 1983); Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power and Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986); Gray v. North Dakota Game and Fish Dept., 2005 ND 204, 706 N.W.2d 614 (N.D. 2005) (Interstate Wildlife Violator Compact).

4 Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power and Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986).

5 U. S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

6 Hess v. Port Authority Trans-Hudson Corp., 513 U.S. 30, 115 S. Ct. 394, 130 L. Ed. 2d 245 (1994).

7 U. S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

8 U. S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

9 U. S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

10 Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010).

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B. Compacts, Cooperation, and Reciprocity Among States

§ 11. Effect of granting congressional consent

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Once it has been given, congressional consent transforms an interstate compact within the Compact Clause into a law of the United States.[1] Since consent is required, an interstate compact is not just a contract but is a federal statute enacted by Congress.[2] While a compact will not become federal law simply because Congress, in an excess of caution, enacts consent legislation, express authorization for the states to enter into a cooperative agreement, the subject matter of which is an appropriate subject for congressional legislation, transforms the states' agreement into federal law.[3] One consequence of this metamorphosis is that, unless the compact is somehow unconstitutional, a court may not order relief inconsistent with its express terms.[4]

CUMULATIVE SUPPLEMENT

Cases:

Once Congress gives its consent for a compact between States, the compact, like any other federal statute, becomes the law of the land. Texas v. New Mexico, 138 S. Ct. 954 (2018).

An interstate compact, having received Congress's blessing, counts as federal law. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

By insisting that Congress approve an interstate compact, the Constitution turns the agreement into a federal law like any other. U.S.C.A. Const. Art. 3, § 2, cl. 1 et seq. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

Supremacy Clause ensures that a congressionally approved interstate compact, as a federal law, pre-empts any state law that conflicts with the compact. U.S.C.A. Const. Art. 1, § 10, cl. 3; U.S.C.A. Const. Art. 6, cl. 2. Tarrant Regional Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013).

When the States themselves have drafted and agreed to the terms of an interstate compact, and Congress's role is limited to approving that compact, there is no reason to invoke the presumption against pre-emption. Tarrant Regional Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Texas v. New Mexico, 462 U.S. 554, 103 S. Ct. 2558, 77 L. Ed. 2d 1 (1983); State of Neb. v. Central Interstate Low-Level Radioactive Waste Compact Com'n, 187 F.3d 982 (8th Cir. 1999); Garey v. Nebraska Dept. of Natural Resources, 277 Neb. 149, 759 N.W.2d 919 (2009); Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden, 111 N.J. 389, 545 A.2d 127 (1988).
As to approval of a compact taking a suit against a member state out of the 11th Amendment, see Am. Jur. 2d, Federal Courts § 913, and on the immunity of bi-state agencies created by compact, see Am. Jur. 2d, Federal Courts § 967.

2 Alabama v. North Carolina, 130 S. Ct. 2295, 176 L. Ed. 2d 1070 (2010); Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010).

3 Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Md., 706 F.2d 1312 (4th Cir. 1983).

4 Texas v. New Mexico, 462 U.S. 554, 103 S. Ct. 2558, 77 L. Ed. 2d 1 (1983); Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010).

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I. States

B. Compacts, Cooperation, and Reciprocity Among States

§ 12. Construction of compacts

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West's Key Number Digest

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Although a compact that has been approved by Congress is the law of the United States, it is also a contract and remains a legal document that must be construed and applied in accordance with its terms[1] according to their plain meaning[2] and in light of the contracting states' intent.[3] If the language of a compact is straightforward and clear, the judicial inquiry ends with the language of the compact,[4] and the interpretation of such a compact must be based on the language of that instrument.[5] The supreme court is especially reluctant to read absent terms into an interstate compact, given the federalism and separation-of-powers concerns that would arise were the court to rewrite an agreement among sovereign states, to which Congress consented, and will not order relief inconsistent with the express terms of the compact, no matter what the equities of the circumstances might otherwise suggest.[6]

The canons of statutory construction also apply to interstate compacts.[7]

An agreement between states by those who alone have political authority to speak for the states is not to be given its final meaning by only one of the contracting states.[8]

CUMULATIVE SUPPLEMENT

Cases:

New Mexico's failure to seek delivery credit, for water that evaporated while being stored in New Mexico at Texas's request, within 30-day deadline set forth in Supreme Court's decree implementing Pecos River Compact did not preclude River Master from ruling in favor of New Mexico's request for credit under the Compact, which provided for equitable apportionment of the

use of the River's water by New Mexico and Texas; both States agreed to postpone River Master's resolution of the evaporated-water issue while they negotiated and sought an agreement, River Master's annual reports repeatedly explained that the States were trying to negotiate a solution, neither State objected to the negotiation procedure, and the decree's deadlines for objections were not jurisdictional. Texas v. New Mexico, 141 S. Ct. 509 (2020).

Supreme Court may not order relief inconsistent with an interstate compact's express terms. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

As with any contract, in interpreting interstate compacts, courts begin by examining the express terms of the compact as the best indication of the intent of the parties. Tarrant Regional Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987); Entergy, Arkansas, Inc. v. Nebraska, 241 F.3d 979 (8th Cir. 2001).

2 Sullivan v. Com., Dept. of Transp., Bureau of Driver Licensing, 550 Pa. 639, 708 A.2d 481 (1998).

3 Montana v. Wyoming, 131 S. Ct. 1765, 179 L. Ed. 2d 799 (2011).

4 State of Neb. v. Central Interstate Low-Level Radioactive Waste Compact Com'n, 187 F.3d 982 (8th Cir. 1999).

5 Pievsky v. Ridge, 98 F.3d 730 (3d Cir. 1996).

6 Alabama v. North Carolina, 130 S. Ct. 2295, 176 L. Ed. 2d 1070 (2010).

7 Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010).

8 State ex rel. Dyer v. Sims, 341 U.S. 22, 71 S. Ct. 557, 95 L. Ed. 713, 62 Ohio L. Abs. 584 (1951).

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B. Compacts, Cooperation, and Reciprocity Among States

§ 13. Construction of compacts—As federal law

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West's Key Number Digest

West's Key Number Digest, States 6

The interpretation of an interstate compact that has been approved by Congress is a question of federal law,[1] and the United States Supreme Court has the final power to pass on its meaning and validity.[2]

A congressionally approved compact takes precedence over statutory law in a member state.[3] However, a compact as to which congressional consent was neither given nor required does not represent federal law and must be construed as state law.[4]

The courts of signatory states should promote consistency when interpreting an interstate compact, based on comity or because those courts are interpreting the same federal law.[5]

CUMULATIVE SUPPLEMENT

Cases:

The Supreme Court may exercise its full authority to remedy violations of and promote compliance with an interstate compact, so as to give complete effect to public law. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

To enter into a settlement contrary to an interstate compact is to violate a federal statute. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

Judicial authority to give effect to, and remedy violations of, federal law fully attends an interstate compact. U.S.C.A. Const. Art. 3, § 2, cl. 1 et seq. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

Before a compact between two States can be given effect it must be approved by Congress; once a compact receives such approval, it is transformed into a law of the United States. U.S.C.A. Const. Art. 1, § 10, cl. 3. Tarrant Regional Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275, 79 S. Ct. 785, 3 L. Ed. 2d 804 (1959); County of Boyd v. US Ecology, Inc., 48 F.3d 359 (8th Cir. 1995); Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010); Proctor v. Washington Metropolitan Area Transit Authority, 412 Md. 691, 990 A.2d 1048, 69 A.L.R.6th 747 (2010) (even though compact codified in state law); Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden, 111 N.J. 389, 545 A.2d 127 (1988).
As to this rule applying to the Interstate Agreement on Detainers, see Am. Jur. 2d, Criminal Law § 503.

2 Nebraska v. Iowa, 406 U.S. 117, 92 S. Ct. 1379, 31 L. Ed. 2d 733 (1972); State ex rel. Dyer v. Sims, 341 U.S. 22, 71 S. Ct. 557, 95 L. Ed. 713, 62 Ohio L. Abs. 584 (1951); Com. v. Florence, 7 Mass. App. Ct. 126, 387 N.E.2d 152 (1979).

3 McComb v. Wambaugh, 934 F.2d 474 (3d Cir. 1991).
A regional water district has standing to assert preemption by a compact. Tarrant Regional Water Dist. v. Herrmann, 656 F.3d 1222 (10th Cir. 2011), petition for cert. filed, 80 U.S.L.W. 3453 (U.S. Jan. 19, 2012).

4 McComb v. Wambaugh, 934 F.2d 474 (3d Cir. 1991); In re Alexis O., 157 N.H. 781, 959 A.2d 176 (2008) (Interstate Compact on the Placement of Children).

5 Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010).

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B. Compacts, Cooperation, and Reciprocity Among States

§ 14. Effect of actions of one party to compact

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West's Key Number Digest

West's Key Number Digest, States 6

A compact may not be unilaterally nullified.[1] Once a compact becomes federal law, it is beyond the judicial power of any party state to declare it not binding upon the state—even on state constitutional grounds—and its provisions, interpreted as federal law, must prevail over any existing or subsequently created provisions of state law in direct conflict.[2] Furthermore, one party to an interstate compact may not enact legislation that would impose burdens on the compact absent the concurrence of the other signatories.[3] However, a compact does not necessarily require that the two states' laws be identical,[4] and a State may legislate with respect to matters covered by a compact so long as that legislative action is consistent with the compact and does not burden the states' actions under it, but one state may not enact legislation that would impose burdens on the compact absent the concurrence of the other signatory states.[5]

CUMULATIVE SUPPLEMENT

Cases:

United States, as intervenor in original action by State of Texas against States of New Mexico and Colorado, alleging that New Mexico had violated Rio Grande Compact by allowing downstream New Mexico users to siphon off water, would be permitted to pursue its claims, which were essentially the same as claims that Texas had already asserted; Compact was inextricably intertwined with United States' Rio Grande Project and contracts to which United States was party, United States played integral role in Compact's operation, breach of Compact could jeopardize federal government's ability to satisfy its treaty obligations with Mexico, and United States had asserted its claims in an existing action brought by Texas, without that State's objection. Act of May 31, 1939, 53 Stat. 785. Texas v. New Mexico, 138 S. Ct. 954 (2018).

Each State's right to invoke the original jurisdiction of the Supreme Court is an important part of the context in which any compact is made. U.S.C.A. Const. Art. 3, § 2, cl. 1 et seq. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

If partial disgorgement will serve to stabilize an interstate compact by conveying an effective message to the breaching party that it must work hard to meet its future obligations, then the Supreme Court has discretion to order only that much. Kansas v. Nebraska, 135 S. Ct. 1042 (2015).

A party's course of performance under an interstate compact is highly significant evidence of its understanding of the compact's terms. Tarrant Regional Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013).

[END OF SUPPLEMENT]

Footnotes

1 State ex rel. Dyer v. Sims, 341 U.S. 22, 71 S. Ct. 557, 95 L. Ed. 713, 62 Ohio L. Abs. 584 (1951).

2 Bush v. Muncy, 659 F.2d 402 (4th Cir. 1981).

3 Kansas City Area Transp. Authority v. State of Mo., 640 F.2d 173 (8th Cir. 1981); Bi-State Development Agency of Missouri-Illinois Metropolitan Dist. v. Director of Revenue, 781 S.W.2d 80 (Mo. 1989).

4 Gray v. North Dakota Game and Fish Dept., 2005 ND 204, 706 N.W.2d 614 (N.D. 2005).

5 Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483 (2010).

72 Am. Jur. 2d States, Etc. § 15

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B. Compacts, Cooperation, and Reciprocity Among States

§ 15. Effect of actions of one party to compact—On entities created by compact

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A.L.R. Library

Construction and Application of Interstate Compact for Adult Offender Supervision, 75 A.L.R.6th 181

Law Reviews and Other Periodicals

Buenger, The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems, 9 Roger Williams U. L. Rev. 71 (2003)

Pincus, When Should Interstate Compacts Require Congressional Consent?, 42 Colum. J.L. & Soc. Probs. 511 (2009)

Bistate entities created by compacts are not subject to the unilateral control of any state.[1] A state may impose its own law on such an organization only if the compact specifically reserves that right to the state.[2] Also, a single state may not unilaterally impose additional duties on a bistate agency,[3] but the states together may subject the agency to complementary or parallel state legislation.[4]

CUMULATIVE SUPPLEMENT

Cases:

Bistate entities' mission is to address interests and problems that do not coincide nicely either with the national boundaries or with State linesinterests that may be badly served or not served at all by the ordinary channels of National or State political action. Wayne Land and Mineral Group, LLC v. Delaware River Basin Commission, 331 F.R.D. 583 (M.D. Pa. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Hess v. Port Authority Trans-Hudson Corp., 513 U.S. 30, 115 S. Ct. 394, 130 L. Ed. 2d 245 (1994).

2 Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power and Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986).

3 International Union of Operating Engineers, Local 68, AFL-CIO v. Delaware River and Bay Authority, 147 N.J. 433, 688 A.2d 569 (1997).

4 International Union of Operating Engineers, Local 68, AFL-CIO v. Delaware River and Bay Authority, 147 N.J. 433, 688 A.2d 569 (1997).

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C. Effect of Admission to Union

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Research References

West's Key Number Digest

West's Key Number Digest, States 4, 8.1 to 10
West's Key Number Digest, Water Law 2650

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West's A.L.R. Digest, Water Law 2650

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C. Effect of Admission to Union

§ 16. Generally

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West's Key Number Digest

West's Key Number Digest, States 8.1 to 10

The U.S. Constitution specifies the manner of admission of states into the Union.[1] Congress, in admitting states into the Union, presumably does not assume to pass on all constitutional questions relating to the character of state governmental organizations.[2]

The enabling act for a state is the fundamental law of that state and is superior to that state's constitution, and its terms may not be altered or disregarded without an act of Congress.[3] However, in interpreting a state's enabling act, a court applies the same rules as in interpreting a state constitution.[4]

A new state government succeeds to all the powers of sovereignty previously enjoyed by Congress and belonging to the original states.[5]

Footnotes

1 U.S. Const. Art. IV, § 3, cl. 1.

2 Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

3 Gladden Farms, Inc. v. State, 129 Ariz. 516, 633 P.2d 325 (1981).

4 Application of Kaul, 261 Kan. 755, 933 P.2d 717 (1997).

5 Carson v. State, 240 Iowa 1178, 38 N.W.2d 168 (1949).

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72 Am. Jur. 2d States, Etc. § 17

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C. Effect of Admission to Union

§ 17. States on equal footing

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 4, 8.1, 9

A new state is admitted into the Union with all of the powers of sovereignty and jurisdiction that pertained to the original states, and those powers may not be constitutionally diminished or impaired by conditions, compacts, or stipulations in the act under which the new state came into the Union that would not be valid and effectual if they were the subject of congressional legislation after admission.[1] In other words, all states, upon their admission into the Union, stand on an equal footing.[2] This doctrine prevents the federal government from impairing the fundamental attributes of state sovereignty when it admits new states into the Union.[3] However, it does not prevent Congress from placing limits on a state through the admission process if the limits are those that Congress could impose them on a state that already has been admitted to the Union.[4]

The constitutional duty of guaranteeing each state a republican form of government[5] does not gives Congress the power to impose restrictions in admitting a new state that deprive it of equality with the other states.[6] Conversely, admission on an equal footing negates any implied, special limitation of any of the paramount powers of the United States in favor of a state.[7] Likewise, it prevents extension of the sovereignty of a state into a domain of political and sovereign power of the United States from which the other states have been excluded.[8] However, it does not prevent Congress from making a remedial measure applicable only in those geographic areas where immediate action seems necessary because the doctrine of the equality of states applies only to the terms on which states are admitted to the Union and not to the remedies for local evils that have subsequently appeared.[9] Thus, distinctions between states in federal legislation may be justified in some cases, and the doctrine of the equality of states does not bar remedies for local evils that have appeared since the states were admitted to the Union; however, a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets.[10]

The equal footing doctrine applies to the political rights and sovereignty of newly created states, and not to their economic or physical characteristics.[11]

CUMULATIVE SUPPLEMENT

Cases:

Entry into the Union of the United States by no means implies the loss of distinct and individual existence by the States. Hall v. Hall, 138 S. Ct. 1118 (2018).

Under the principle of equal footing, a new State, upon entry to the Union, necessarily becomes vested with all the legal characteristics and capabilities of the first 13 States; that principle is essential to ensure that the nation remains a union of States alike in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States. U.S.C.A. Const. Art. 4, § 3, cl. 1. Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016).

A departure from the fundamental principle of states' equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets. Shelby County, Ala. v. Holder, 133 S. Ct. 2612 (2013).

Not only do States retain sovereignty under the Constitution, there is also a fundamental principle of equal sovereignty among the States. Shelby County, Ala. v. Holder, 133 S. Ct. 2612 (2013).

Our Nation was and is a union of States, equal in power, dignity, and authority, and, indeed, the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. Shelby County, Ala. v. Holder, 133 S. Ct. 2612 (2013).

The fundamental principle of equal sovereignty among the States remains highly pertinent in assessing disparate treatment of States subsequent to their admission. Shelby County, Ala. v. Holder, 133 S. Ct. 2612 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Com. of Virginia v. State of West Virginia, 246 U.S. 565, 38 S. Ct. 400, 59 L. Ed. 1272 (1918); Potter v. Murray City, 760 F.2d 1065 (10th Cir. 1985).

2 Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 119 S. Ct. 1187, 143 L. Ed. 2d 270 (1999); U.S. v. Alaska, 521 U.S. 1, 117 S. Ct. 1888, 138 L. Ed. 2d 231 (1997).

3 Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 119 S. Ct. 1187, 143 L. Ed. 2d 270 (1999).

4 Branson School Dist. RE-82 v. Romer, 161 F.3d 619, 130 Ed. Law Rep. 1105 (10th Cir. 1998).

5 U.S. Const. Art. IV, § 4.

6 United States v. Chavez, 290 U.S. 357, 54 S. Ct. 217, 78 L. Ed. 360 (1933); Burdett v. Burdett, 1910 OK 120, 26 Okla. 416, 109 P. 922 (1910).

7 U.S. v. State of Tex., 339 U.S. 707, 70 S. Ct. 918, 94 L. Ed. 1221 (1950).

8 U.S. v. State of Tex., 339 U.S. 707, 70 S. Ct. 918, 94 L. Ed. 1221 (1950).

9 State of S.C. v. Katzenbach, 383 U.S. 301, 86 S. Ct. 803, 15 L. Ed. 2d 769 (1966).

10 Northwest Austin Mun. Utility Dist. No. One v. Holder, 557 U.S. 193, 129 S. Ct. 2504, 174 L. Ed. 2d 140 (2009).

11 U.S. v. Gardner, 107 F.3d 1314 (9th Cir. 1997).

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I. States

C. Effect of Admission to Union

§ 18. States on equal footing—Effect of principle on property and riparian rights

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 8.1, 9
West's Key Number Digest, Water Law 2650

The equal-footing clause of a resolution admitting a state into the Union has a direct effect on certain property rights in that to deny the subsequently admitted states the ownership of the shores of navigable waters and the soil under them would deny them admission on an equal footing because the original states reserved these rights.[1] Thus, generally, on the admission of a state, the title of the United States to land underlying navigable waters within the state passes to it.[2] However, it has been recognized that Congress' power to regulate property of the United States under the Property Clause of the Constitution[3] extends to granting submerged lands to private parties and thereby defeats a future state's equal footing title.[4] Even so, under equal footing analysis, a court deciding a question of title to the bed of a navigable water must begin with a strong presumption against defeating a state's title, and a contrary intention must be definitely declared or otherwise made very plain.[5]

Observation:

The principle underlying the "equal footing doctrine" is that navigable waters uniquely implicate sovereign interests.[6]

If the newly admitted state was formerly a sovereign republic, it relinquishes to the United States its sovereignty in external affairs and with it any claim that the State may have had to the marginal sea.[7] Nonetheless, the geographical extent of a state's boundaries has nothing to do with political equality so the equal-footing concept does not require that the boundary provisions of an act admitting a state should be given an artificial construction to equalize its maritime boundaries with those of other states.[8]

The equal footing doctrine affects states' title to public lands within their boundaries primarily with regard to the shores of and lands beneath navigable waters, not as to dry lands.[9] However, small unsurveyed islands in a navigable lake that are of no apparent value to the United States pass to the state upon admission to the Union under the equal footing doctrine.[10]

Footnotes

1 U.S. v. State of Tex., 339 U.S. 707, 70 S. Ct. 918, 94 L. Ed. 1221 (1950).
As to state property, generally, see §§ 67 et seq.

2 U.S. v. Alaska, 521 U.S. 1, 117 S. Ct. 1888, 138 L. Ed. 2d 231 (1997); Utah Div. of State Lands v. U.S., 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 (1987); U.S. v. State of Oregon, 295 U.S. 1, 55 S. Ct. 610, 79 L. Ed. 1267 (1935).
Alaska is entitled, under the equal footing doctrine, to submerged lands beneath tidal and inland navigable waters. Alaska v. U.S., 545 U.S. 75, 125 S. Ct. 2137, 162 L. Ed. 2d 57 (2005), judgment entered, 546 U.S. 413, 126 S. Ct. 1014, 163 L. Ed. 2d 995 (2006).
Under the equal footing doctrine, Montana did not hold title to riverbeds under segments of a river that were nonnavigable at the time of statehood even if the remainder of the river was navigable, and the nonnavigable segments could be traversed by a portage; navigability for this purpose must be assessed as of the time of statehood and concerns the river's usefulness for trade and travel rather than for other purposes; mere use by explorers or trappers who may have dragged their boats in or alongside the river despite its nonnavigability is not itself sufficient. PPL Montana, LLC v. Montana, 132 S. Ct. 1215, 182 L. Ed. 2d 77 (2012).

3 U.S. Const. Art. IV, § 3, cl. 2.

4 U.S. v. Alaska, 521 U.S. 1, 117 S. Ct. 1888, 138 L. Ed. 2d 231 (1997).

5 U.S. v. Alaska, 521 U.S. 1, 117 S. Ct. 1888, 138 L. Ed. 2d 231 (1997).

6 Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

7 U.S. v. State of Tex., 339 U.S. 707, 70 S. Ct. 918, 94 L. Ed. 1221 (1950).

8 U.S. v. States of La., Tex., Miss., Ala. and Fla., 363 U.S. 1, 363 U.S. 121, 80 S. Ct. 961, 4 L. Ed. 2d 1025, 4 L. Ed. 2d 1096 (1960), opinion supplemented, 382 U.S. 288, 86 S. Ct. 419, 15 L. Ed. 2d 331 (1965).

9 U.S. v. Gardner, 107 F.3d 1314 (9th Cir. 1997).

10 Wolff v. U.S., 974 F.2d 702 (6th Cir. 1992).

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D. Relation to Federal Government

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D. Relation to Federal Government

§ 19. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 4, 4.4, 4.16(1), 18.1 to 18.11

Law Reviews and Other Periodicals

Vladeck, State sovereign immunity and the Roberts Court, 5 Charleston L. Rev. 99 (2010)

Dual sovereignty is a defining feature of the federal system.[1] The distribution of powers between the federal government and the states is governed by the 10th Amendment[2] and the Supremacy Clause.[3] Based on these provisions, states and their officers are bound by the obligations imposed by the Constitution and by federal statutes that come within the powers delegated to Congress.[4] However, the federal government does not have the power to control the power or authority of the states except to the extent that power has been expressly granted in the Constitution or as it is necessary to maintain the acknowledged powers of the federal government.[5] Except in the exercise of a delegated power, the federal government may not interfere with the government activities of the state or dictate its public policy,[6] and a clear and manifest statement from Congress is ordinarily required to authorize an unprecedented intrusion into traditional state authority.[7]

Congress may not directly compel states or localities to enact or to administer policies or programs adopted by the federal government[8] and does not have the power to alter by legislation the provisions of a state constitution.[9] Although the Supremacy Clause precludes any effort by states to divorce themselves from the application of federal law when they choose to act, Congress must assign the enforcement duty to federal officials unless the Constitution itself authorizes the use of the states as agents.[10] A federal court must also identify a constitutional predicate for imposing any affirmative duty on a state.[11]

Since federalism protects the liberty of all persons within a state, by ensuring that laws enacted in excess of delegated federal government power do not direct or control state government actions, an individual may have standing to challenge the constitutionality of an act of Congress that violates the 10th Amendment, particularly when that person has a significant liberty interest at stake.[12]

A State may place greater restrictions on the exercise of its own power than does the U.S. Constitution.[13]

A State may not enforce licensing requirements, which, although valid in the absence of federal regulation, give the state's licensing board a virtual power of review over a federal determination that a person or agency is qualified and entitled to perform certain functions or which impose on the performance of activities sanctioned by a federal license additional conditions not contemplated by Congress.[14]

CUMULATIVE SUPPLEMENT

Cases:

In the federal system, the National Government possesses only limited powers; the States and the people retain the remainder. Bond v. U.S., 134 S. Ct. 2077 (2014).

Maintaining the constitutional balance between the National Government and the States is not merely an end unto itself; rather, by denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. Bond v. U.S., 134 S. Ct. 2077 (2014).

The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. Shelby County, Ala. v. Holder, 133 S. Ct. 2612 (2013).

Congress may withdraw specified powers from the States by enacting statute containing express preemption provision. U.S.C.A. Const. Art. 6, cl. 2. Arizona v. U.S., 132 S. Ct. 2492 (2012).

Consideration of issues arising under the Supremacy Clause starts with the assumption that the historic police powers of the States are not to be superseded by Federal Act unless that is the clear and manifest purpose of Congress; when a federal statute regulates an area that is traditionally subject to state authority, courts should be reluctant to find preemption. U.S.C.A. Const. Art. 6, cl. 2. Nevils v. Group Health Plan, Inc., 418 S.W.3d 451 (Mo. 2014).

Under the anticommandeering doctrine, even a particularly strong federal interest does not enable Congress to command a state government to enact state regulation or enable it to compel a state to enact and enforce a federal regulatory scheme. In re State Question No. 807, Initiative Petition No. 423, 2020 OK 57, 468 P.3d 383 (Okla. 2020), as corrected, (June 25, 2020).

[END OF SUPPLEMENT]

Footnotes

1 Sossamon v. Texas, 131 S. Ct. 1651, 179 L. Ed. 2d 700 (2011).
The bases, benefits, and limits of federalism are discussed in Bond v. U.S., 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011).

2 Am. Jur. 2d, Constitutional Law §§ 214 et seq.

3 Am. Jur. 2d, Constitutional Law §§ 53 et seq.

4 Alden v. Maine, 527 U.S. 706, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999).

5 Boeing Aircraft Co. v. Reconstruction Finance Corp., 25 Wash. 2d 652, 171 P.2d 838, 168 A.L.R. 539 (1946).

6 Schippa v. West Virginia Liquor Control Commission, 132 W. Va. 51, 53 S.E.2d 609, 9 A.L.R.2d 1284 (1948).

7 Rapanos v. U.S., 547 U.S. 715, 126 S. Ct. 2208, 165 L. Ed. 2d 159 (2006).

8 City of New York v. U.S., 179 F.3d 29 (2d Cir. 1999).

Federal officers are prohibited from conscripting or commandeering state officials to administer and enforce a federal regulatory program, but such was not required by the Sex Offender Registration Notification Act [18 U.S.C.A. § 2250(a)]. U.S. v. Felts, 674 F.3d 599 (6th Cir. 2012).

9 Boeing Aircraft Co. v. Reconstruction Finance Corp., 25 Wash. 2d 652, 171 P.2d 838, 168 A.L.R. 539 (1946).

10 Travis v. Reno, 163 F.3d 1000 (7th Cir. 1998).

11 Youngberg v. Romeo, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982).

12 U.S. v. Felts, 674 F.3d 599 (6th Cir. 2012) (person facing incarceration for not registering as a sex offender had standing to raise the argument that enforcement of the Sex Offender Registration Notification Act [18 U.S.C.A. § 2250(a)] violated the 10th Amendment because it forced state officials to register sex offenders in compliance with the Act's onerous requirements before a State had an opportunity to comply with that Act voluntarily).

13 McCrory v. State, 342 So. 2d 897 (Miss. 1977).

14 Sperry v. State of Fla. ex rel. Florida Bar, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963) (holding that a nonlawyer who has met all the federal requirements for practicing before the Patent Office may not be enjoined by a state on the theory that he was engaged in the unauthorized practice of law).

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§ 20. Powers not reserved to states

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 4.4

If a power is delegated to Congress in the Constitution, the 10th Amendment expressly disclaims any reservation of that power to the states.[1] The powers delegated to the United States for this purpose include those specifically enumerated powers listed in Article I along with the implementation authority granted by the Necessary and Proper Clause; thus, those powers are not powers that the Constitution has reserved to the states.[2] For instance, if a State engages in economic activities that are validly regulated by the federal government when private persons engage in them, that state may be forced to conform its activities to federal regulation.[3] When Congress enacts legislation under its spending power, that legislation is in the nature of a contract; therefore, in return for federal funds, the states agree to comply with federally imposed conditions.[4]

CUMULATIVE SUPPLEMENT

Cases:

The Supremacy Clause provides a rule of decision for determining whether federal or state law applies in a particular situation. U.S. Const. art. 6, cl. 2. Kansas v. Garcia, 140 S. Ct. 791 (2020).

Federal Death Penalty Act (FDPA) did not violate the Tenth Amendment, even if interests of state of Michigan, which had abolished death penalty, outweighed interests of federal government, where authority to prescribe punishments for federal crimes was not a power that the Constitution reserved to the states, and Congress did not exceed its authority under the Commerce Clause in criminalizing murder in aid of racketeering and using and carrying a firearm during and in relation to a crime of violence. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S. Const. Amend. 10; 18 U.S.C.A. §§ 924(c), 1959, 3591 et seq. United States v. Mills, 393 F. Supp. 3d 650 (E.D. Mich. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Watters v. Wachovia Bank, N.A., 550 U.S. 1, 127 S. Ct. 1559, 167 L. Ed. 2d 389 (2007).

2 U.S. v. Comstock, 130 S. Ct. 1949, 176 L. Ed. 2d 878 (2010).

3 Brennan v. State of Iowa, 494 F.2d 100 (8th Cir. 1974).

4 Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 125 S. Ct. 1497, 161 L. Ed. 2d 361 (2005).

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§ 21. Police power

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 4.4(2), 18.13

The police power is an attribute of a state's sovereignty and is an essential element of the power to govern,[1] which is reserved to the states.[2] The structure and limitations of federalism allow states great latitude under their police powers to legislate with regard to protection of the lives, health, and comfort of all persons.[3] Analysis of preemption issues starts with the assumption that the historic police powers of the states are not superseded by federal law unless that is the clear and manifest purpose of Congress.[4] On the other hand, even though regulation of health and safety is primarily, and historically, a matter of local concern, the federal government may set uniform national standards in these areas.[5]

CUMULATIVE SUPPLEMENT

Cases:

It is a background principle that Congress does not normally intrude upon the police power of the States. Bond v. U.S., 134 S. Ct. 2077 (2014).

When analyzing the scope of a preemption statute, consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety, a court's analysis must start with the assumption that the historic police powers of the states are not to be superseded by the federal act unless that was the clear and manifest purpose of Congress. Gustavson v. Wrigley Sales Company, 961 F. Supp. 2d 1100 (N.D. Cal. 2013).

In analyzing whether a federal law preempts a state law, courts should assume that the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress. U.S.C.A. Const. Art. 6, cl. 2. Zanders v. Wells Fargo Bank N.A., 55 F. Supp. 3d 1163 (S.D. Iowa 2014).

Because field preemption typically arises in areas traditionally regulated by states under their police powers, congressional intent to supersede state laws must be clear and manifest. U.S.C.A. Const. Art. 6, cl. 2. PPL EnergyPlus, LLC v. Hanna, 977 F. Supp. 2d 372 (D.N.J. 2013).

[END OF SUPPLEMENT]

Footnotes

1 CLEAN v. State, 130 Wash. 2d 782, 928 P.2d 1054 (1996), as amended, (Jan. 13, 1997).

2 City of Baton Rouge v. Ross, 654 So. 2d 1311 (La. 1995); Norfolk & W. Ry. Co. v. Pennsylvania Public Utility Commission, 489 Pa. 109, 413 A.2d 1037 (1980) (rejected on other grounds by, Kurns v. A.W. Chesterton Inc, 620 F.3d 392 (3d Cir. 2010)).

3 Gonzales v. Oregon, 546 U.S. 243, 126 S. Ct. 904, 163 L. Ed. 2d 748 (2006).

In addressing a statute enacted to preempt state law, the system of federalism has caused the Supreme Court to presume that Congress does not cavalierly preempt state law causes of action; this presumption against preemption especially applies in areas historically governed by the police power of the states and has led to narrow interpretation of express preemption provisions. Sweeney v. Savings First Mortg., LLC, 388 Md. 319, 879 A.2d 1037 (2005).

The federal system contemplates that individual states may adopt distinct policies to protect their own residents and generally may apply those policies to businesses that choose to conduct business within that state. Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 45 Cal. Rptr. 3d 730, 137 P.3d 914 (2006).

4 Jevne v. Superior Court, 35 Cal. 4th 935, 28 Cal. Rptr. 3d 685, 111 P.3d 954 (2005); PNH, Inc. v. Alfa Laval Flow, Inc., 130 Ohio St. 3d 278, 2011-Ohio-4398, 958 N.E.2d 120 (2011), cert. denied, 2012 WL 369089 (U.S. 2012).

The states' police powers relating to public health and safety are not preempted by federal law unless Congress's intent to do so is clearly expressed. Gomez v. St. Jude Medical Daig Div. Inc., 442 F.3d 919 (5th Cir. 2006).

5 Gonzales v. Oregon, 546 U.S. 243, 126 S. Ct. 904, 163 L. Ed. 2d 748 (2006).

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§ 22. State's power over its government and officers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 4.4(1)

A.L.R. Library

Preemption of State Statute, Law, Ordinance, or Policy with Respect to Law Enforcement or Criminal Prosecution as to Aliens, 75 A.L.R.6th 541

Trial Strategy

Extreme Hardship Suspending Deportation of Alien, 35 Am. Jur. Proof of Facts 2d 459

Law Reviews and Other Periodicals

Chin, The Unconstitutionality of State Regulation of Immigration Through Criminal Law, 61 Duke L.J. 251 (November 2011)
Eagly, Local Immigration Prosecution: A Study of Arizona Before SB 1070, 58 UCLA L. Rev. 1749 (August 2011)
Grube, Preemption of Local Regulations Beyond Lozano v. City of Hazleton: Reconciling Local Enforcement with Federal Immigration Policy, 95 Cornell L. Rev. 391 (January 2010)

Lane, Testing The Borders: The Boundaries of State and Local Power to Regulate Illegal Immigration, 39 Pepp. L. Rev. 483 (February 2012)

McKanders, Unforgiving of Those Who Trespass Against U.S.: State Laws Criminalizing Immigration Status, 12 Loy. J. Pub. Int. L 331 (Spring 2011)

Motomura, The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil—Criminal Line, 58 UCLA L. Rev. 1819 (August, 2011)

Panel on Federalism in Practice — National and Local Perspectives on States' Use of Criminal Law To Regulate Undocumented or Unauthorized Migration, 12 Loy. J. Pub. Int. L 375 (Spring 2011)

A State has the right to order its own affairs and govern its own people except to the extent that the U.S. Constitution expressly or by fair implication has withdrawn that power.[1] The powers to locate its own seat of government and to change it are essentially and peculiarly state powers.[2] The states have great latitude to establish the structure and jurisdiction of their own courts;[3] however, this power does not give the states the authority to nullify a federal right or cause of action that they believe is inconsistent with their local policies.[4] Furthermore, a State is entitled to order the processes of its own governance, such as by assigning to the political branches, rather than the courts, the responsibility for directing the payment of debts.[5]

CUMULATIVE SUPPLEMENT

Cases:

The States' powers to undertake criminal prosecutions do not derive from the Federal Government; instead, the States rely on authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment. U.S.C.A. Const.Amend. 10. Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016).

[END OF SUPPLEMENT]

Footnotes

1 Am. Jur. 2d, Constitutional Law § 217.

2 Coyle v. Smith, 221 U.S. 559, 31 S. Ct. 688, 55 L. Ed. 853 (1911).

3 Johnson v. Fankell, 520 U.S. 911, 117 S. Ct. 1800, 138 L. Ed. 2d 108 (1997); Blount v. Stroud, 232 Ill. 2d 302, 328 Ill. Dec. 239, 904 N.E.2d 1 (2009).

4 Haywood v. Drown, 556 U.S. 729, 129 S. Ct. 2108, 173 L. Ed. 2d 920 (2009) (further holding that a State may not relieve congestion in its courts by declaring a whole category of federal claims to be frivolous, no matter how evenhanded the state rule may appear).

5 Alden v. Maine, 527 U.S. 706, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999).

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§ 23. Effect of state regulation on federal government

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 18.93

A corollary to the principle of the supremacy of federal law over state law is the principle that the activities of the federal government are free from regulation by any state.[1] The general sovereign immunity of the federal government, its agencies, and instrumentalities, from state or local control of its governmental functions, is established under the Supremacy Clause.[2] Thus, the United States may perform its functions without conforming to the police regulation of the states.[3] Furthermore, Congress may authorize construction of federal housing without regard to state or municipal laws and regulations,[4] and the United States is not required to comply with state recording statutes.[5]

A State may not impair the standing of federal liens to favor a city without the consent of Congress.[6] A state grand jury may not investigate the operation of a federal agency.[7]

The rule of federal immunity has its limitations and qualifications: if there is no contrary federal regulation or policy, and Congress has not expressed any intent to exclude state regulation, a state regulation may be valid even though it imposes some burden on the federal government.[8]

CUMULATIVE SUPPLEMENT

Cases:

Intergovernmental immunity under Supremacy Clause prevented States through unclaimed property acts from acquiring funds that had their origin in debt that United States had incurred to finance its operations; although United States had to pay sums due on bonds to holders of matured bonds when owners presented them for payment, funds remained federal property, and

government could use proceeds from sale of savings bonds for expenditures authorized by federal law, until holders did so. U.S.C.A. Const. Art. 4, § 3, cl. 2; N.J.S.A. 46:30B–1 et seq. Treasurer of New Jersey v. U.S. Dept. of Treasury, 684 F.3d 382 (3d Cir. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Mayo v. U.S., 319 U.S. 441, 63 S. Ct. 1137, 87 L. Ed. 1504, 147 A.L.R. 761 (1943); KKW Enterprises, Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp., 184 F.3d 42 (1st Cir. 1999); U.S. v. Town of Windsor, Conn., 765 F.2d 16 (2d Cir. 1985); Citizens and Landowners Against the Miles City/New Underwood Powerline v. Secretary, U.S. Dept. of Energy, 683 F.2d 1171 (8th Cir. 1982); U.S. v. State of N.M., 32 F.3d 494 (10th Cir. 1994); State of Ariz. v. Bowsher, 935 F.2d 332 (D.C. Cir. 1991).
As to state and local taxation of the property, agencies, and instrumentalities of the United States, see Am. Jur. 2d, State and Local Taxation §§ 1 et seq.

2 Maun v. U.S., 347 F.2d 970 (9th Cir. 1965).

3 State of Arizona v. State of California, 283 U.S. 423, 51 S. Ct. 522, 75 L. Ed. 1154 (1931).

4 U. S. v. City of Chester, 144 F.2d 415 (C.C.A. 3d Cir. 1944).

5 In re American Boiler Works, 220 F.2d 319 (3d Cir. 1955).

6 U.S. v. City of New Britain, Conn., 347 U.S. 81, 74 S. Ct. 367, 98 L. Ed. 520 (1954).

7 U.S. v. McLeod, 385 F.2d 734 (5th Cir. 1967).

8 Penn Dairies v. Milk Control Commission of Pennsylvania, 318 U.S. 261, 63 S. Ct. 617, 87 L. Ed. 748 (1943).

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§ 24. Effect of state regulation on federal government—Public or private instrumentalities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 18.93

The immunity of the national government from state regulation is not usually extended beyond the government itself and governmental functions performed by its officers and agents.[1] For example, such immunity does not extend to those who merely contract to furnish supplies or render services to the government even if, as a result of an increase in the price of those supplies or services attributable to the state regulation, its ultimate effect may be to impose an additional economic burden on the government.[2] If Congress has not acted to exercise its exclusive jurisdiction in providing certain services, state regulation of an independent contractor who provides those services does not infringe on federal government immunity, but an exception to this rule is recognized if the regulation is in direct interference with the governmental function or some congressional policy.[3]

A limited federal instrumentality is immune from state and local regulation only when its actions are within the scope of the federal purpose that Congress has assigned to it, and the state law or local regulation, if applied, would sufficiently restrict the private entity's federal purpose.[4]

CUMULATIVE SUPPLEMENT

Cases:

Neither Virginia Supreme Court nor the Virginia General Assembly has the authority to define Virginia's laws in such a way as to affect the relationship between the federal government and members of its armed forces on active duty. Gibbs v. Newport News Shipbuilding and Drydock Co., 733 S.E.2d 648 (Va. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Penn Dairies v. Milk Control Commission of Pennsylvania, 318 U.S. 261, 63 S. Ct. 617, 87 L. Ed. 748 (1943).

2 Penn Dairies v. Milk Control Commission of Pennsylvania, 318 U.S. 261, 63 S. Ct. 617, 87 L. Ed. 748 (1943); Pennsylvania Liquor Control Board v. Publicker Commercial Alcohol Co., 347 Pa. 555, 32 A.2d 914 (1943).

As to state regulation of contractors for federal projects, generally, see Am. Jur. 2d, Public Works and Contracts § 4.

3 Beauregard Elec. Co-op., Inc. v. Louisiana Public Service Commission, 378 So. 2d 404 (La. 1979).

4 City of Detroit v. Ambassador Bridge Co., 481 Mich. 29, 748 N.W.2d 221 (2008) (bridge company was a federal instrumentality for purposes of federal preemption with regard to facilitating traffic across a bridge that linked Canada to the United States).

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§ 25. Effect of state regulation on federal government—Effect of congressional authorization of state regulation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 18.93

Congress may authorize the states to regulate federal instrumentalities,[1] but because of the fundamental importance of the principles shielding federal installations and activities from regulation by the states, an authorization of state regulation is found only when and to the extent that there is a clear congressional mandate; that is, specific congressional action that makes this authorization of state regulation clear and unambiguous.[2] As otherwise stated, absent an express waiver of sovereign immunity, the activities of the federal government are free from regulation of the state as a waiver of the traditional sovereign immunity cannot be implied but must be unequivocally expressed.[3]

Footnotes

1 Mayo v. U.S., 319 U.S. 441, 63 S. Ct. 1137, 87 L. Ed. 1504, 147 A.L.R. 761 (1943); Citizens and Landowners Against the Miles City/New Underwood Powerline v. Secretary, U.S. Dept. of Energy, 683 F.2d 1171 (8th Cir. 1982); U.S. v. State of N.M., 32 F.3d 494 (10th Cir. 1994).

2 Citizens and Landowners Against the Miles City/New Underwood Powerline v. Secretary, U.S. Dept. of Energy, 683 F.2d 1171 (8th Cir. 1982); Jack's Tours, Inc. v. Kilauea Military Camp, 112 Haw. 150, 145 P.3d 693 (2006).

3 U.S. v. State of N.M., 32 F.3d 494 (10th Cir. 1994).

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E. Boundaries

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Research References

West's Key Number Digest

West's Key Number Digest, States 12 to 13
West's Key Number Digest, Water Law 2647

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A.L.R. Index, States
West's A.L.R. Digest, States 12 to 13
West's A.L.R. Digest, Water Law 2647

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E. Boundaries

1. In General

§ 26. Governing law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12, 13

Principles of international law govern boundaries between states.[1] Furthermore, a compact between two states establishing the line between them adopted by their commissioners, and to which Congress assents, is a law of the United States,[2] which is binding on both states and their citizens[3] and may not be adjusted by the United States Supreme Court.[4] Whether a particular agreement with respect to boundaries is within the Compact Clause depends on whether the establishment of the boundary line may lead to an increase of the political power or influence of the states affected and thus encroach on the full and free exercise of federal authority.[5]

In accordance with Congress's power to admit new states,[6] if the extent of a state's territorial jurisdiction is relevant to the operation of federal law, the congressional delineation of the boundaries prevails over conflicting state assertions.[7] However, once the boundary line of a state is established, Congress[8] and the United States Supreme Court[9] do not have the power to alter the line without the states' consent.

Footnotes

1 State of Wis. v. State of Mich., 295 U.S. 455, 55 S. Ct. 786, 79 L. Ed. 1541 (1935).
As to boundaries of nations, see Am. Jur. 2d, International Law § 30.

2 New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726, 140 L. Ed. 2d 993 (1998), judgment entered, 526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 (1999).
As to compacts between states, generally, see §§ 9 et seq.

3 State of Georgia v. State of South Carolina, 257 U.S. 516, 42 S. Ct. 173, 66 L. Ed. 347 (1922); State of Minnesota v. State of Wisconsin, 252 U.S. 273, 40 S. Ct. 313, 64 L. Ed. 558 (1920).

4 New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726, 140 L. Ed. 2d 993 (1998), judgment entered, 526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 (1999).

5 New Hampshire v. Maine, 426 U.S. 363, 96 S. Ct. 2113, 48 L. Ed. 2d 701 (1976).

6 § 16.

7 People v. Weeren, 26 Cal. 3d 654, 163 Cal. Rptr. 255, 607 P.2d 1279 (1980).

8 State of N.M. v. State of Colo., 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499 (1925).

9 New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726, 140 L. Ed. 2d 993 (1998), judgment entered, 526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 (1999).

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E. Boundaries

1. In General

§ 27. Determination by acquiescence and prescription

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12, 13

Under the acquiescence doctrine, long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority[1] even if it is later ascertained that the line varies somewhat from the courses given in the original plat.[2] The doctrine does not depend on the original validity of a boundary line; rather, it attaches legal consequences to acquiescence in the observance of the boundary.[3] Long and continued acquiescence in the construction of a grant or a compact, the possession of territory under such a document, and the exercise of dominion and sovereignty over the territory may have controlling effect in the determination of a disputed boundary.[4] In fact, inaction alone may constitute acquiescence if the inaction continues for a sufficiently long period.[5]

For a state to establish a boundary between itself and another state on the theory of prescription and acquiescence, that state must show, by a preponderance of the evidence, a long and continuous possession of, and assertion of sovereignty over, the disputed territory and the other state's long acquiescence in those acts.[6] While long acquiescence may have a controlling effect in the determination of a boundary, a minimum period of prescription is not established to perfect a jurisdictional claim over another state's territory.[7] A particular relationship between the origin of a boundary and the legal consequences of acquiescence in that boundary need not be shown.[8]

Footnotes

1 City of Sherrill, N.Y. v. Oneida Indian Nation of New York, 544 U.S. 197, 125 S. Ct. 1478, 161 L. Ed. 2d 386 (2005).

2 State of New Jersey v. State of Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934).

3 City of Sherrill, N.Y. v. Oneida Indian Nation of New York, 544 U.S. 197, 125 S. Ct. 1478, 161 L. Ed. 2d 386 (2005).

4 Com. of Massachusetts v. State of New York, 271 U.S. 65, 46 S. Ct. 357, 70 L. Ed. 838 (1926).

5 Georgia v. South Carolina, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

6 Illinois v. Kentucky, 500 U.S. 380, 111 S. Ct. 1877, 114 L. Ed. 2d 420 (1991).

7 New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726, 140 L. Ed. 2d 993 (1998), judgment entered, 526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 (1999).

8 California v. Nevada, 447 U.S. 125, 100 S. Ct. 2064, 65 L. Ed. 2d 1 (1980).

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72 Am. Jur. 2d States, Etc. § 28

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I. States

E. Boundaries

1. In General

§ 28. Ownership of islands

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12

In some instances, the ownership of islands as between two states is settled by the act admitting one of the states into the Union and defining its boundaries.[1] In others, it has been settled by compact or convention between the states making claims to the islands.[2] Ownership over islands may also be acquired by acquiescence.[3]

A newly formed island is part of the state on the side of the main channel where the island forms.[4]

There is an exception to the rule that a boundary along a river's main channel moves as the channel changes with the gradual processes of erosion and accretion;[5] in the case of a divided flow around an island: a boundary once established on one side of an island remains there even if the main downstream navigation channel shifts to the island's other side.[6] Thus, if a river has subsequently turned course, and runs on the other side of an island, the boundary between the states remains as before, and the island does not, in consequence of this action of the water, change states even if the change of the main channel occurred gradually and by natural means.[7] Furthermore, if the boundary of a state along a river is not changed by a sudden change of the river channel so as to cut an island off from the mainland, the island remains within the boundaries of the state to which it formerly belonged.[8]

Footnotes

1 State of Mich. v. State of Wis., 270 U.S. 295, 46 S. Ct. 290, 70 L. Ed. 595 (1926) (islands between Michigan and Wisconsin); State of Washington v. State of Oregon, 214 U.S. 205, 29 S. Ct. 631, 53 L. Ed. 969 (1909) (islands in Columbia River belonging to Oregon).

2 State of Georgia v. State of South Carolina, 257 U.S. 516, 42 S. Ct. 173, 66 L. Ed. 347 (1922) (islands in Chattanooga River).

3 State of Mich. v. State of Wis., 270 U.S. 295, 46 S. Ct. 290, 70 L. Ed. 595 (1926).

4 Moore v. Rone, 355 S.W.2d 398 (Mo. Ct. App. 1962).
The main channel rule is discussed in § 30.

5 § 33.

6 Louisiana v. Mississippi, 516 U.S. 22, 116 S. Ct. 290, 133 L. Ed. 2d 265 (1995).

7 Moore v. Rone, 355 S.W.2d 398 (Mo. Ct. App. 1962).

8 State of Okl. v. State of Tex., 260 U.S. 606, 43 S. Ct. 221, 67 L. Ed. 428 (1923).

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E. Boundaries

1. In General

§ 29. Ownership of submerged lands

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Water Law 2647

States enjoy a presumption of title to submerged lands beneath inland navigable waters within their boundaries and beneath territorial waters within three nautical miles of their coasts.[1] The inquiry, for the purpose of determining if the United States clearly intended to include submerged lands within a federal reservation before creating a state, thereby rebutting that state's presumed title to those lands, is whether the United States expressed its intent to retain federal title to the submerged lands within the reservation.[2]

CUMULATIVE SUPPLEMENT

Cases:

The title to and dominion over subaqueous bottomland is an essential attribute of the Commonwealth's state sovereignty. Submerged Lands Act, § 3, 43 U.S.C.A. § 1311. Virginia Marine Resources Com'n v. Chincoteague Inn, 757 S.E.2d 1 (Va. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Alaska v. U.S., 545 U.S. 75, 125 S. Ct. 2137, 162 L. Ed. 2d 57 (2005), judgment entered, 546 U.S. 413, 126 S. Ct. 1014, 163 L. Ed. 2d 995 (2006).

2 Alaska v. U.S., 545 U.S. 75, 125 S. Ct. 2137, 162 L. Ed. 2d 57 (2005), judgment entered, 546 U.S. 413, 126 S. Ct. 1014, 163 L. Ed. 2d 995 (2006).

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E. Boundaries

2. Boundaries Along or in Bodies of Water

§ 30. Middle of main channel (thalweg doctrine)

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12.1, 12.2
West's Key Number Digest, Water Law 2647

If a river is the boundary between two states, but the original property is in neither, and any special convention respecting the boundary, long use equivalent to such a convention, or other controlling circumstance to the contrary does not exist, each state holds to the middle of the main channel of the stream. This is known as the doctrine of "thalweg."[1]

The phrases "middle of the river" and "middle of the main channel," when employed to designate the boundary between states, both signify the mean centerline of the main navigable channel or, as it is more frequently expressed, the "thread of the stream."[2] This principle applies to sounds, bays, straits, gulfs, estuaries, and other arms of the sea.[3]

The reason for the thalweg doctrine, which makes the middle of the channel of commerce the boundary line, rather than taking the middle line between the shores of the river, lies in the right of each state to equal privileges in the navigation of the river.[4] On the other hand, if there is not a necessary track of navigation, the line of demarcation is drawn in the middle, and this is true of narrow straits separating the lands of two different states.[5]

The thalweg doctrine may become inapplicable if there has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction.[6]

Footnotes

1 State of Ark. v. State of Tenn., 310 U.S. 563, 60 S. Ct. 1026, 84 L. Ed. 1362 (1940).

2 Moore v. Rone, 355 S.W.2d 398 (Mo. Ct. App. 1962).

3 State of Louisiana v. State of Mississippi, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913 (1906).

4 State of Ark. v. State of Tenn., 310 U.S. 563, 60 S. Ct. 1026, 84 L. Ed. 1362 (1940); State of Wis. v. State of Mich., 295 U.S. 455, 55 S. Ct. 786, 79 L. Ed. 1541 (1935); State of New Jersey v. State of Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934).

5 State of Minnesota v. State of Wisconsin, 252 U.S. 273, 40 S. Ct. 313, 64 L. Ed. 558 (1920).

6 State of Ark. v. State of Tenn., 310 U.S. 563, 60 S. Ct. 1026, 84 L. Ed. 1362 (1940).

As to determination of boundaries by acquiescence, see § 27.

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2. Boundaries Along or in Bodies of Water

§ 31. Middle of main channel (thalweg doctrine)—Application to navigable rivers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12.1, 12.2
West's Key Number Digest, Water Law 2647

In the case of navigable rivers, the doctrine of thalweg is ordinarily construed to mean that each state takes to the middle of the principal channel of navigation[1]—not necessarily the deepest channel[2]—and it does not, therefore, mean, with respect to navigable rivers, a line equidistant from each bank.[3] The course commonly taken downstream by vessels navigating the river is a matter of evidence.[4]

Observation:

The issue of a state's territorial limits is distinct from that of its right to control navigation.[5]

Footnotes

1 State of Kansas v. State of Missouri, 322 U.S. 213, 64 S. Ct. 975, 88 L. Ed. 1234 (1944), judgment entered, 322 U.S. 654, 64 S. Ct. 1202, 88 L. Ed. 1518 (1944); State of Ark. v. State of Tenn., 269 U.S. 152, 46 S. Ct. 31, 70 L. Ed. 206 (1925); State of Minnesota v. State of Wisconsin, 252 U.S. 273, 40 S. Ct. 313, 64 L. Ed. 558 (1920); State of Arkansas v. State of Mississippi, 250 U.S. 39, 39 S. Ct. 422, 63 L. Ed. 832 (1919).

2 State of Minnesota v. State of Wisconsin, 252 U.S. 273, 40 S. Ct. 313, 64 L. Ed. 558 (1920); State of Arkansas v. State of Mississippi, 250 U.S. 39, 39 S. Ct. 422, 63 L. Ed. 832 (1919).

3 State of Wis. v. State of Mich., 295 U.S. 455, 55 S. Ct. 786, 79 L. Ed. 1541 (1935); State of New Jersey v. State of Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934); State of Arkansas v. State of Mississippi, 250 U.S. 39, 39 S. Ct. 422, 63 L. Ed. 832 (1919); State v. Moyers, 155 Iowa 678, 136 N.W. 896 (1912).

4 Louisiana v. Mississippi, 466 U.S. 96, 104 S. Ct. 1645, 80 L. Ed. 2d 74 (1984).

5 Warner v. Dunlap, 532 F.2d 767, 35 A.L.R. Fed. 515 (1st Cir. 1976).

As to states' rights to control navigable waters, generally, see Am. Jur. 2d, Waters § 138.

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2. Boundaries Along or in Bodies of Water

§ 32. Boundary on riverbank

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12.1

If one state is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly created state extends to the river only, with the low-water mark as its boundary.[1]

The boundary of a state, designated as the further bank of a river flowing along the boundary, is the usual high-water mark.[2]

Footnotes

1 Marine Ry. & Coal Co. v. U.S., 257 U.S. 47, 42 S. Ct. 32, 66 L. Ed. 124 (1921).

2 Smoot Sand & Gravel Corporation v. Washington Airport, 283 U.S. 348, 51 S. Ct. 474, 75 L. Ed. 1109 (1931).

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2. Boundaries Along or in Bodies of Water

§ 33. Effect of changes in channel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12.1, 12.2
West's Key Number Digest, Water Law 2647

The effect on boundaries of a state fixed by the middle of the main channel of a river, by changes in that channel through processes of accretion and avulsion, depends on the gradualness or suddenness of the change; if the course of the river and its channel changes gradually, the boundary follows the channel, but if the river suddenly changes its course or leaves its natural channel, the boundary remains where it was before.[1] The fact that the former channel may have ceased to be navigable does not change this rule.[2]

Footnotes

1 New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726, 140 L. Ed. 2d 993 (1998), judgment entered, 526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 (1999); Louisiana v. Mississippi, 466 U.S. 96, 104 S. Ct. 1645, 80 L. Ed. 2d 74 (1984); Arkansas v. Tennessee, 397 U.S. 88, 90 S. Ct. 784, 25 L. Ed. 2d 73 (1970), decision supplemented, 399 U.S. 219, 90 S. Ct. 2222, 26 L. Ed. 2d 537 (1970).
As to the burden of proof in a suit between the states if the boundary river has shifted, see § 36.

2 State of Louisiana v. State of Mississippi, 282 U.S. 458, 51 S. Ct. 197, 75 L. Ed. 459 (1931).
As to whether this rule applies with regard to islands, see § 28.

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2. Boundaries Along or in Bodies of Water

§ 34. Effect of avulsion, erosion, or accretion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12.1, 12.2
West's Key Number Digest, Water Law 2647

In the customary situation involving a river as the boundary between states, the well-recognized and accepted rules of accretion and avulsion applying to a wandering river usually apply, but a river boundary that depends on historical factors may differ from that customary situation so that such rules are not applicable.[1]

In fixing the boundary along a main navigable channel that has been left dry by avulsion, all that is required is such certainty as is reasonable as a practical matter, having regard for the circumstances.[2]

When the boundary is on a bank of a river,[3] the boundary changes with erosion or accretion of the bank.[4]

Footnotes

1 Ohio v. Kentucky, 444 U.S. 335, 100 S. Ct. 588, 62 L. Ed. 2d 530 (1980), judgment entered, 471 U.S. 153, 105 S. Ct. 2011, 85 L. Ed. 2d 119 (1985).
As to accretion, alluvion, reliction, erosion, and avulsion of beds, banks, and shores or water bodies, generally, see Am. Jur. 2d, Waters §§ 311 et seq.

2 State of Ark. v. State of Tenn., 269 U.S. 152, 46 S. Ct. 31, 70 L. Ed. 206 (1925).

3 § 32.

4 State of Louisiana v. State of Mississippi, 282 U.S. 458, 51 S. Ct. 197, 75 L. Ed. 459 (1931); State of N.M. v. State of Tex., 275 U.S. 279, 48 S. Ct. 126, 72 L. Ed. 280 (1927), modified on other grounds, 276 U.S. 558, 48 S. Ct. 344, 72 L. Ed. 699 (1928).

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E. Boundaries

2. Boundaries Along or in Bodies of Water

§ 35. Concurrent jurisdiction of states over bodies of water forming boundaries

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12.2

States may, with the consent of Congress, grant each other concurrent jurisdiction over a stream forming the boundary between them for the purpose of criminal prosecutions.[1] It may be assumed that, when fixing the boundary line between states in the waters of a bay, Congress intended that each state should have equality of right and opportunity with respect to those waters, including navigation, fishing, and other uses.[2]

In a grant of "concurrent jurisdiction on the water," the term is generally held to relate to matters at least in some way connected with the use of the water for purposes of navigation, with which would be difficult to deal if it were necessary to determine in each instance the precise location of the particular act with regard to the boundary line.[3] Concurrent jurisdiction extends only to the body of a stream that constitutes a common highway of commerce and not to the unnavigable waters that emerge from the main body and make their way inland, and the state in which they are found has exclusive jurisdiction over those waters.[4] This jurisdiction also does not extend to permanent structures attached to the riverbed and within the boundary of one or the other state.[5]

If the boundary is later established on one side of the river, concurrent jurisdiction exercised before the formation of the Union ceases by operation of law and gives way to exclusive jurisdiction of the State in which the river lies.[6]

If a claim arises from an accident on an interstate bridge, concurrent jurisdiction applies because the situation does not differ in principle from a crossing by ferryboat or steamer.[7] However, concurrent jurisdiction does not apply if the claim is that the bridge itself was negligently constructed and maintained.[8]

Footnotes

1 Wedding v. Meyler, 192 U.S. 573, 24 S. Ct. 322, 48 L. Ed. 570 (1904); Streckfus Steamers v. Fox, 14 F. Supp. 312 (S.D. W. Va. 1936).

2 State of Wis. v. State of Mich., 295 U.S. 455, 55 S. Ct. 786, 79 L. Ed. 1541 (1935).

3 Smoot v. Fischer, 248 S.W.2d 38 (Mo. Ct. App. 1952).

4 Little v. Green, 144 Iowa 492, 123 N.W. 367 (1909).

5 State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546 (1950); Gerhard v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 866 (Mo. 1957).

6 Barnes v. State, 186 Md. 287, 47 A.2d 50 (1946).

7 Smoot v. Fischer, 248 S.W.2d 38 (Mo. Ct. App. 1952).

8 Gerhard v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 866 (Mo. 1957).

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E. Boundaries

3. Proceedings to Establish Boundaries

§ 36. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12, 13

The United States Supreme Court has original jurisdiction of a suit to establish the boundary line between states,[1] and a dispute between the United States and a state over a boundary between the state and a territory may also be resolved in an original action in the Supreme Court.[2]

In matters regarding state boundaries, the intention, when clearly manifested by cessions, grants, or legislative acts, should control; to determine that intention, the Court will refer to treaties and conventions or enactments material to those documents.[3] A document fixing a boundary between states is to be construed with a view to avoiding controversy.[4]

If the disputed boundary is a river, the channel of which has shifted, the burden of proof is on the complainant, particularly if the disputed location formerly was, and at present is, on the opposite side of the existing main channel.[5]

The possibility of a negotiated settlement of state boundary disputes, resulting in a compact, which will be binding when it receives the consent of Congress,[6] is always open as an alternative to suit,[7] and an amicable adjustment between the states is always favored.[8]

Observation:

The Supreme Court is not bound by a state court's resolution of an interstate boundary dispute.[9]

Footnotes

1 Mississippi v. Louisiana, 506 U.S. 73, 113 S. Ct. 549, 121 L. Ed. 2d 466 (1992) (district court lacked jurisdiction for this reason); State of Wis. v. State of Mich., 295 U.S. 455, 55 S. Ct. 786, 79 L. Ed. 1541 (1935); State of New Jersey v. State of Delaware, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934).
As to the original jurisdiction of Supreme Court in cases in which a state is a party, generally, see Am. Jur. 2d, Federal Courts §§ 482 et seq.

2 Am. Jur. 2d, Federal Courts § 498.

3 State of Vt. v. State of N.H., 289 U.S. 593, 53 S. Ct. 708, 77 L. Ed. 1392 (1933).

4 State of Vt. v. State of N.H., 289 U.S. 593, 53 S. Ct. 708, 77 L. Ed. 1392 (1933).

5 State of Kansas v. State of Missouri, 322 U.S. 213, 64 S. Ct. 975, 88 L. Ed. 1234 (1944), judgment entered, 322 U.S. 654, 64 S. Ct. 1202, 88 L. Ed. 1518 (1944).

6 § 26.

7 Durfee v. Duke, 375 U.S. 106, 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963).

8 State of Minnesota v. State of Wisconsin, 252 U.S. 273, 40 S. Ct. 313, 64 L. Ed. 558 (1920).

9 New Jersey v. New York, 523 U.S. 767, 118 S. Ct. 1726, 140 L. Ed. 2d 993 (1998), judgment entered, 526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 (1999).
The precedent in private litigation concerning jurisdiction, between two states, over an island that had formed in a river constituting the states' common boundary, was not binding in a subsequent original action in the Supreme Court between the states to establish their boundary. Mississippi v. Arkansas, 415 U.S. 289, 94 S. Ct. 1046, 39 L. Ed. 2d 333 (1974).

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E. Boundaries

3. Proceedings to Establish Boundaries

§ 37. Disputes between private parties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 12, 13

Since a dispute between states about the location of the boundary between them can be settled only by a compact or the Supreme Court, if litigation between private parties turns on the location of a state boundary, the state court has the authority to decide where the line is but not where it ought to be.[1] A state is not bound by the results of such litigation; however, if the issue has been fully and fairly litigated and finally determined, it may not be retried in another state in litigation between the same parties.[2]

CUMULATIVE SUPPLEMENT

Cases:

In a real property action involving private parties that requires the determination of the boundary line between West Virginia and another state, neither the state of West Virginia nor the other state is a required party to the litigation. Rules Civ.Proc., Rule 19(a). Lowe v. Richards, 763 S.E.2d 64 (W. Va. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Brown v. Jarratt, 228 Miss. 338, 87 So. 2d 874 (1956).

2 Durfee v. Duke, 375 U.S. 106, 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963).

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F. Legislature

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, States 24.1 to 26, 28 to 39.5, 42
West's Key Number Digest, Statutes 22

A.L.R. Library

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West's A.L.R. Digest, States 24.1 to 26, 28 to 39.5, 42
West's A.L.R. Digest, Statutes 22

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F. Legislature

1. In General

§ 38. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 24.1

Legislative jurisdiction refers to both the lawmaking power of a state and the power of a state to apply its laws to any given set of facts. Because there must be at least some minimal contact between a state and the regulated subject before the State may, consistently with the requirements of due process, exercise legislative jurisdiction, the idea of "contacts" between the regulated parties and the State is of great significance when analyzing legislative jurisdiction.[1]

A state legislature may be an entity subject to service of process.[2]

Footnotes

1 Adventure Communications, Inc. v. Kentucky Registry of Election Finance, 191 F.3d 429 (4th Cir. 1999).

2 State ex rel. Stephan v. Kansas House of Representatives, 236 Kan. 45, 687 P.2d 622 (1984).
As to a state's immunity from suit, generally, see §§ 101 et seq.

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F. Legislature

1. In General

§ 39. Quorum

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 33

In the absence of a quorum, any business transacted by the legislative body is void; however, in the absence of a contrary rule, a presiding officer's determination of the presence of a quorum is presumed correct until it is challenged or until a vote discloses the absence of a quorum.[1] Vacancies do not have an effect on whether a quorum is present, where a state constitution requires a majority or supermajority of the elected members to constitute a quorum.[2]

In a joint session of a state legislature, the two houses are no longer separate bodies, but instead are merged, so a quorum is simply a majority of the total membership of the unicameral body without regard to whether those members come from the senate or the assembly.[3]

Footnotes

1 Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

2 Marionneaux v. Hines, 902 So. 2d 373 (La. 2005).

3 Anderson v. Krupsak, 40 N.Y.2d 397, 386 N.Y.S.2d 859, 353 N.E.2d 822 (1976).

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F. Legislature

2. Powers and Duties

a. Overview

§ 40. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 24.1 to 26

A state legislature has plenary power except where forbidden to act by the state constitution.[1] Otherwise stated, a state legislature may rightfully exercise the power of the people subject only to the restrictions of the state or federal constitutions.[2] Subject to these restraints and restrictions, a state legislature has unlimited power to act in its sphere of legislation[3] and to pass any law it sees fit.[4] The vesting, in general terms, of the legislative power of the state in a general assembly confers a general and unlimited power to make all such laws as the legislature may think proper.[5] Large discretion is necessarily vested in a state legislature to determine not only what the interests of the public require but also what measures are necessary for the protection of those interests.[6]

Restraints on the legislative power must be either express or by necessary and fair implication.[7]

Authority to punish contempt has been recognized as a necessary incident inherent in the organization of legislative bodies to protect their own processes and existence.[8]

A general power to contract is vested in the state legislature unless the state constitution contains limitations on that power.[9] However, absent some clear indication that the legislature intends to bind itself contractually, the presumption is that a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued.[10]

A state senate has the right to determine where it will sit.[11]

Observation:

State legislatures are not subject to federal direction.[12]

A legislature may act on every subject that is within the scope of civil government and is not within some constitutional inhibition.[13] If the public interest is affected, the legislature has the power to determine what adjustment is required.[14]

One legislature does not have the power to restrict the power of the succeeding legislature,[15] but one legislature may make a contract that will bind those that come after it.[16]

The delegation by the legislature of legislative powers to executive branch agencies does not necessarily violate a state constitution.[17]

Footnotes

1 Libertarian Party of Wisconsin v. State, 199 Wis. 2d 790, 546 N.W.2d 424 (1996).
Unlike Congress, which is constrained by the enumeration of limited powers in the U.S. Constitution, the state's legislative power is plenary; the legislature has the general authority to enact measures that promote the public health, safety, welfare, and morals of the citizens of the state. In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 2012 WL 499046 (N.J. 2012).

2 Murphy v. Epes, 283 Ark. 517, 678 S.W.2d 352 (1984); SNPCO, Inc. v. City of Jefferson City, 2012 WL 987998 (Tenn. 2012).

3 State ex rel. James v. Schorr, 45 Del. 18, 65 A.2d 810 (1948); Smith v. Penta, 81 N.J. 65, 405 A.2d 350 (1979); Brumley v. Baxter, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945); City of Pawtucket v. Sundlun, 662 A.2d 40, 102 Ed. Law Rep. 235 (R.I. 1995).

4 SC Testing Technology, Inc. v. Department of Environmental Protection, 688 A.2d 421 (Me. 1996); State ex rel. Cashman v. Sims, 130 W. Va. 430, 43 S.E.2d 805, 172 A.L.R. 1389 (1947).

5 Ostrander v. Preece, 129 Ohio St. 625, 3 Ohio Op. 24, 196 N.E. 670, 103 A.L.R. 218 (1935).

6 State v. Ertelt, 548 N.W.2d 775 (N.D. 1996).

7 Colorado Ass'n of Public Employees v. Lamm, 677 P.2d 1350 (Colo. 1984); Beasley v. Cunningham, 171 Tenn. 334, 103 S.W.2d 18, 110 A.L.R. 306 (1937).

8 Am. Jur. 2d, Contempt § 238.

9 In re Request for Advisory Opinion Enrolled Senate Bill 558 (being 1976 PA 240), 400 Mich. 175, 400 Mich. 311, 254 N.W.2d 544 (1977).

10 Simpson v. Murkowski, 129 P.3d 435 (Alaska 2006); Office of Hawaiian Affairs v. State, 110 Haw. 338, 133 P.3d 767 (2006).

11 Goodover v. Department of Admin., 201 Mont. 92, 651 P.2d 1005 (1982).

12 Printz v. U.S., 521 U.S. 898, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997).
As to the distribution of powers between state governments and the federal government, see §§ 19 et seq.

13 Stark County v. Henry County, 326 Ill. 535, 158 N.E. 116, 54 A.L.R. 777 (1927).

14 Stephens v. Bonding Ass'n of Kentucky, 538 S.W.2d 580 (Ky. 1976).

15 Village of North Atlanta v. Cook, 219 Ga. 316, 133 S.E.2d 585 (1963); Frost v. State, 172 N.W.2d 575 (Iowa 1969).

16 State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S. Ct. 443, 82 L. Ed. 685, 113 A.L.R. 1482 (1938).

17 Benson v. State, 389 Md. 615, 887 A.2d 525 (2005).

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2. Powers and Duties

a. Overview

§ 41. Power to act by resolution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 39
West's Key Number Digest, Statutes 22

A resolution is indicative of the will or opinion of the legislature on a particular subject of general concern.[1] If the state constitution does not contain a limitation on the legislature's power to act by resolution, it may do so.[2] However, a resolution of the legislature in conflict with an existing law is invalid.[3]

Observation:

State legislative resolutions are entitled to respectful consideration by the courts.[4]

A resolution that is not legislative in character but merely relates to matters of formal procedure, of which the senate and house have exclusive control, need not be presented to the governor.[5] However, to have the force and effect of law, as opposed to

regulating only the internal affairs of the assembly, a resolution must be approved by the governor or passed over the governor's objections.[6]

Footnotes

1 Breck v. Janklow, 2001 SD 28, 623 N.W.2d 449 (S.D. 2001).

2 State ex rel. Robinson v. Fluent, 30 Wash. 2d 194, 191 P.2d 241 (1948).
A statute permitting a legislature to elect members to the State Board Of Regents by joint ballot of the senate and assembly if they failed to elect by concurrent resolution did not violate constitutional provisions giving the "Legislature" authority and control over the board. LaValle v. Hayden, 98 N.Y.2d 155, 746 N.Y.S.2d 125, 773 N.E.2d 490, 168 Ed. Law Rep. 438 (2002).

3 Doyle v. Hofstader, 257 N.Y. 244, 177 N.E. 489, 87 A.L.R. 418 (1931).

4 Breck v. Janklow, 2001 SD 28, 623 N.W.2d 449 (S.D. 2001).

5 Richardson v. Young, 122 Tenn. 471, 125 S.W. 664 (1910).

6 State ex rel. Royal Ins. v. Director of Missouri Dept. of Ins., 894 S.W.2d 159 (Mo. 1995).

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a. Overview

§ 42. Administration of public affairs

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 24.1

A state legislature may, except to the extent it is restricted by the applicable state constitution, establish whatever system seems to it best for the convenient administration of public affairs throughout its territorial limits.[1]

The fact that a state legislature has once decided in what manner the public affairs are to be administered does not mean that it has divested itself of its powers of exercising government authority directly.[2]

Footnotes

1 Dumont v. Speers, 245 A.2d 151 (Me. 1968); Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 44 S.E.2d 88, 173 A.L.R. 397 (1947).

2 Village of Kingsford v. Cudlip, 258 Mich. 144, 241 N.W. 893 (1932); Richmond, F. & P.R. Co. v. City of Richmond, 145 Va. 225, 133 S.E. 800 (1926).

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b. Sessions

§ 43. Power to convene

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 32

In the absence of a constitutional provision authorizing a state legislature to convene itself, it may not do so, and any acts or intended acts of members, if so assembled, are without authority of law, whether the act is for legislative or inquisitorial purposes.[1] Thus, a state senate does not have the power to convene itself to consider recess appointments made by the governor.[2]

Footnotes

1 Simpson v. Hill, 1927 OK 453, 128 Okla. 269, 263 P. 635, 56 A.L.R. 706 (1927) (convening for impeachment).

2 Walker v. Baker, 145 Tex. 121, 196 S.W.2d 324 (1946).

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b. Sessions

§ 44. Length of session

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 32

Under a state constitution that provides that a legislative session is not to exceed a designated number of days, unless extended by the concurrence of two-thirds of the members of each house, the session terminates by operation of law at midnight on the last day; an act on which the vote was taken after midnight is void, and the device of stopping the clock does not affect this result.[1] However, if there is not a clear limitation on the legislative power to extend the session or a time limit specified, the determination of the date for the termination of an extended session is a matter of legislative discretion.[2]

Footnotes

1 State ex rel. Heck's Discount Centers, Inc. v. Winters, 147 W. Va. 861, 132 S.E.2d 374 (1963).

2 Wells v. Purcell, 267 Ark. 456, 592 S.W.2d 100 (1979).

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§ 45. Adjournment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 32

For purposes of a constitutional provision limiting each regular session of the legislature to 90 legislative days, the legislature has the power to determine for itself when to adjourn a legislative day, subject to a rule of reason.[1] Under some state constitutions, each house of the legislature is prohibited from adjourning sine die without consent of the other.[2] Under such a provision, a particular method of manifestation of consent is not required, so if both houses adopt similar resolutions to adjourn on the same day, there is consent to adjournment, even in the absence of a joint resolution.[3]

Footnotes

1 Bellmon v. Barker, 1988 OK 79, 760 P.2d 813 (Okla. 1988).

2 Alabama Citizens Action Program v. Kennamer, 479 So. 2d 1237 (Ala. 1985); Frame v. Sutherland, 459 Pa. 177, 327 A.2d 623 (1974).
The purpose of a constitutional provision requiring the consent of the other legislative chamber when one chamber wants to adjourn for more than three days is to ensure that both chambers fulfill their duty of deliberating the merits of proposed legislation. Smigiel v. Franchot, 410 Md. 302, 978 A.2d 687 (2009).

3 Alabama Citizens Action Program v. Kennamer, 479 So. 2d 1237 (Ala. 1985).

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b. Sessions

§ 46. Extraordinary sessions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 32

Under a constitutional provision authorizing the governor to call an extraordinary session, that power rests solely with the governor; it may not be exercised by the legislature, nor may the governor be divested of this power except by a constitutional amendment.[1] Where a state constitution does not indicate what constitutes an "extraordinary occasion" to justify an extra session, that matter is left to the governor's discretion, and a court may not review that decision.[2]

While a governor may have the power to call a special session even if the legislature, not having adjourned sine die, is still in general session,[3] elsewhere, the governor lacks constitutional authority to call an extra session of the general assembly while it was already in annual session but in recess.[4] If one branch of the legislature has already acted, the governor has the power to convene the other.[5] Under some state constitutions, the governor is not limited in the number of special sessions that he or she may call and is not required to limit the consideration of any subject to only a single special session.[6]

A constitutional provision that limits the regular session of a state legislature to 60 days does not constitute a restraint on the legislature's power to sit in extraordinary session until the business before it has been concluded.[7]

A state constitutional provision authorizing the legislature to convene an emergency session applies to an unforeseen combination of circumstances that calls for immediate action, as well as a pressing need, whatever the nature and source of that need, or where a distressing event or condition has arisen even if the possibility of that event or condition had been anticipated.[8]

Footnotes

1 Simpson v. Hill, 1927 OK 453, 128 Okla. 269, 263 P. 635, 56 A.L.R. 706 (1927).

2 McConnell v. Haley, 393 S.C. 136, 711 S.E.2d 886 (2011).

3 State ex rel. Groppi v. Leslie, 44 Wis. 2d 282, 171 N.W.2d 192 (1969).

4 McConnell v. Haley, 393 S.C. 136, 711 S.E.2d 886 (2011).

5 Application of Lamb, 67 N.J. Super. 39, 169 A.2d 822 (App. Div. 1961), judgment aff'd, 34 N.J. 448, 170 A.2d 34 (1961).

6 Martinez v. Martinez, 545 So. 2d 1338 (Fla. 1989).

7 State ex rel. Distilled Spirits Institute, Inc. v. Kinnear, 80 Wash. 2d 175, 492 P.2d 1012 (1972).

8 George v. Courtney, 344 Or. 76, 176 P.3d 1265 (2008).

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§ 47. Rules

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 35

Essential to the exercise of legislative powers is the ability of each house to govern its own proceedings.[1] State constitutions generally give each house of the legislature the power to determine the rules of its own proceedings.[2] That power is unlimited except as controlled by other provisions of the state constitution.[3]

Observation:

Rules conferring on the lieutenant governor the power to appoint members of committees and to refer bills to committees are "rules of procedure" within the meaning of such a provision.[4]

It is each house's duty to keep a record of its proceedings and to publish that record periodically.[5] However, separation of powers prevents a court from ordering legislative clerks to remove material from the official journals.[6]

A statute requiring the filing of financial interest statements of public officials and candidates and regulating various ethics matters does not intrude on the right of a state senate and house to determine their own rules.[7]

A state senate or house of representatives may pass an internal operating rule for its own procedures that is in conflict with a statute previously enacted.[8] Under its exclusive rulemaking prerogative, a house of the legislature is free to disregard or supersede such statutes by unicameral action.[9]

Since a legislature has complete discretion whether to observe, enforce, waive, suspend, or disregard its own rules of procedure,[10] mere violations of the parliamentary rules of procedure do not constitute grounds for voiding legislation; those rules may be suspended by the legislative body and do not have binding force on subsequent terms of that body.[11]

Footnotes

1 Brown v. Owen, 165 Wash. 2d 706, 206 P.3d 310 (2009).

2 Opinion of the Justices, 295 Ala. 26, 322 So. 2d 107 (1975); Dye v. State ex rel. Hale, 507 So. 2d 332 (Miss. 1987); Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005) (absolute and continuous power).

3 Birmingham-Jefferson Civic Center Authority v. City of Birmingham, 912 So. 2d 204 (Ala. 2005).
A constitutional provision requiring that each house of the legislature determine its own rules of procedure does not qualify another provision that every measure be presented to the governor when finally passed. Brewer v. Burns, 222 Ariz. 234, 213 P.3d 671 (2009).

4 Dye v. State ex rel. Hale, 507 So. 2d 332 (Miss. 1987).

5 Williams v. MacFeeley, 186 Ga. 145, 197 S.E. 225 (1938).
As to whether such records are subject to freedom of information statutes, see Am. Jur. 2d, Freedom of Information Acts § 12.

6 State ex rel. Holmes v. Clawges, 226 W. Va. 479, 702 S.E.2d 611 (2010).

7 Opinion of the Justices to the Senate, 375 Mass. 795, 376 N.E.2d 810 (1978).

8 Coggin v. Davey, 233 Ga. 407, 211 S.E.2d 708 (1975).

9 Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).

10 Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).

11 State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

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§ 48. Open meeting and notice requirements

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West's Key Number Digest

West's Key Number Digest, States 35 to 38

A statute requiring state agencies to have public meetings—an "open meetings law"—applies to legislators and legislative committees, subject to an express exception in that statute.[1] An open meetings law's definition of "agency" as including "any branch" of the state government includes the legislative branch.[2] Thus, an open meetings law generally applies to votes on the floor of a house of the state legislature; however, organizational votes taken on the floor of the state house of representatives, such as a vote for the removal of the house speaker, may be exempt from the coverage of such a statute.[3]

In some states, there is a constitutional requirement of reasonable notice of state legislative meetings; thus, meetings of a joint session of a state legislature may not be convened without reasonable notice of the time and place of the meeting.[4] However, separation of powers principles may prevent a court from reviewing the issue whether the legislature violated a public meetings law by failing to provide the public with 24 hours' notice of a legislative meeting.[5]

A state constitution's provision that the public's right of access to government proceedings and records shall not be unreasonably restricted does not require that the legislature adopt particular internal procedures to protect the public's right of access.[6] Limiting the number of members of the public allowed in a legislative chamber does not violate a provision of a state constitution requiring that the doors of each house be kept open except when public welfare requires secrecy, since this was not a requirement that the legislature provide access to as many members of the public as wished to attend, so long as the doors were kept open to the press and members of the public during enactment of a bill.[7]

Footnotes

1 Starr v. Governor, 154 N.H. 174, 910 A.2d 1247 (2006) (all sessions subject to open meeting law); State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

2 Consumers Ed. and Protective Ass'n v. Nolan, 470 Pa. 372, 368 A.2d 675 (1977).

3 Malone v. Meekins, 650 P.2d 351 (Alaska 1982).

4 Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985).

5 State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436 (2011).

6 Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005) (also noting that to determine whether restrictions are "reasonable," the court balances the public's right of access against the competing constitutional interests in the context of the facts of each case).

7 State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436 (2011).

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§ 49. Open meeting and notice requirements—Committees or caucuses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 34

Any legislative meeting or hearing at which a bill is considered or testimony is taken is covered by an open meetings law even if a vote is not scheduled or taken.[1] A legislative joint finance committee is required to conduct its meetings under the requirements of an open session law, including public notice and advance announcement of closed sessions, whenever it is formally constituted.[2]

A state constitutional provision requiring that the "doors of each House shall be kept open during its session" does not prohibit a state senate from authorizing a closed committee meeting to review evidence that the parties subpoenaed to appear before the committee want to keep confidential.[3] The closing of legislative committee meetings did not violate a state constitutional provision requiring that the business of each house, and of the committee of the whole, be transacted openly, nor one giving the people the right to instruct their representatives, since it did not specify the manner by which the people could exercise that right and did not purport to require that legislative committee meetings be open.[4]

The closing of conference committee meetings did not violate a constitutional provision on the public's right to know since the constitutional need for free legislative debate outweighed the public's right of access to disputed negotiations on a bill; considering the public and open nature of the legislative process and public access to records and debates, the legislature could properly have determined that denying public access to the negotiations was reasonable.[5]

It has been held that legislative caucus meetings are "meetings" of policy-making bodies within the meaning of an open meetings law.[6] However, there is also authority that because partisan caucuses are inherently conferences and not "meetings of a governmental body," within the meaning of an open meetings law, the notice requirements of such a statute did not apply.[7]

Footnotes

1 Consumers Ed. and Protective Ass'n v. Nolan, 470 Pa. 372, 368 A.2d 675 (1977).

2 State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

3 Sarkes Tarzian, Inc. v. Legislature of the State of Nev., 104 Nev. 672, 765 P.2d 1142 (1988).

4 Idaho Press Club, Inc. v. State Legislature of the State, 142 Idaho 640, 132 P.3d 397 (2006).

5 Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).

6 Cole v. State, 673 P.2d 345 (Colo. 1983).

7 State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

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§ 50. Role of lieutenant governor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 35, 42

The fact that the state constitution gives the lieutenant governor the duty of presiding over the senate does not give him or her the right to vote in case of a tie.[1] However, some state constitutions contain a further provision requiring that the lieutenant governor vote only when the senate is equally divided, which applies despite a more general provision stating that no bill shall become a law except by a vote of a majority of all the members present in each house.[2]

A lieutenant governor's duty, when acting as president of a state senate, to rule on a point of parliamentary order is discretionary and not subject to mandamus.[3]

Footnotes

1 State ex rel. Palmer v. Perpich, 289 Minn. 149, 182 N.W.2d 182 (1971).

2 State ex rel. Easbey v. Highway Patrol Bd., 140 Mont. 383, 372 P.2d 930 (1962).

3 Brown v. Owen, 165 Wash. 2d 706, 206 P.3d 310 (2009).

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§ 51. Power of inquiry

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 34, 39.5

The power of inquiry—with the power to enforce it[1]—is an essential[2] and appropriate[3] auxiliary to the legislative function. Legislative bodies have the inherent power to conduct investigations in aid of prospective legislation and for the purpose of securing information needed for the proper discharge of their functions and powers.[4] A legislative body may exercise the power directly.[5] It has also been recognized that legislative investigations, whether by standing or special committees, are an established part of representative government.[6]

Footnotes

1 Com. ex rel. Carcaci v. Brandamore, 459 Pa. 48, 327 A.2d 1 (1974).

2 Lanza v. New York State Joint Legislative Committee on Government Operations, 3 N.Y.2d 92, 164 N.Y.S.2d 9, 143 N.E.2d 772 (1957); Com. ex rel. Carcaci v. Brandamore, 459 Pa. 48, 327 A.2d 1 (1974).

3 Matter of Shain, 92 N.J. 524, 457 A.2d 828 (1983).

4 Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); In re Opinion of the Justices, 248 Ala. 590, 29 So. 2d 10 (1947); Matter of Shain, 92 N.J. 524, 457 A.2d 828 (1983).
The legislature is vested with all investigative power necessary to exercise its function properly. Chesek v. Jones, 406 Md. 446, 959 A.2d 795 (2008).

5 In re Battelle, 207 Cal. 227, 277 P. 725, 65 A.L.R. 1497 (1929).

6 Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951); Matter of Shain, 92 N.J. 524, 457 A.2d 828 (1983).
As to the creation or appointment of investigative committees, generally, see § 53.

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d. Power to Investigate; Legislative Committees and Fact-Finding Bodies

§ 52. Scope and limits of investigative power

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 39.5

Normally, a state legislature has the power to obtain information on any subject relevant to the proper discharge of its legitimate functions.[1] This power encompasses inquiries concerning the administration of existing laws, as well as the need for proposed ones.[2] A legislative inquiry may be proper even though the subject involves crimes.[3] The bounds of legislative power are not exceeded unless there is an obvious usurpation of functions exclusively vested in the judiciary or executive.[4]

The legislature's power of investigation is circumscribed by reasonable limits[5]—the investigative action must be within the scope of the legislature's authority and must focus on issues that are germane to future legislation.[6] An investigation that intrudes into the area of constitutionally protected rights of speech, press, association, and petition will not be upheld without a convincing showing of a substantial relation between the information sought and a subject of overriding and compelling state interest.[7]

A delegation to one of its own members of unlimited and uncontrolled discretion to decide what shall be investigated during a recess is an unlawful delegation of the legislature's investigatory power.[8] However, legislators do not have standing to sue other legislators or an independent investigator about the scope of an investigation.[9]

Footnotes

1 Morss v. Forbes, 24 N.J. 341, 132 A.2d 1 (1957).

2 Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963).

3 Morss v. Forbes, 24 N.J. 341, 132 A.2d 1 (1957); Eggers v. Kenny, 15 N.J. 107, 104 A.2d 10 (1954).

4 Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951); Missouri Coalition for Environment v. Joint Committee on Administrative Rules, 948 S.W.2d 125 (Mo. 1997), as modified on denial of reh'g, (Feb. 25, 1997) (recognizing the legislature's right to obtain information to review regulatory action but not to veto rulemaking).

5 Johnston v. Gallen, 217 So. 2d 319 (Fla. 1969).

6 Garner v. Cherberg, 111 Wash. 2d 811, 765 P.2d 1284 (1988).

7 Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963).

8 Johnston v. Gallen, 217 So. 2d 319 (Fla. 1969).

9 Keller v. French, 205 P.3d 299 (Alaska 2009).

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§ 53. Creation of investigative committees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 34

Legislatures have the inherent power to appoint investigative committees.[1] Creation of such a body to provide information to the legislature, but not to exercise legislative functions, does not violate the separation of powers doctrine.[2] Such a committee may be endowed with some portion of the investigatory power that the legislature enjoys as a whole.[3]

A committee may be appointed at a session of the legislature that is not empowered to enact laws[4] or a session that is constitutionally limited to the organization of the legislature.[5] A committee may also be appointed during a special session.[6] However, if the state constitution provides that certain sessions of the legislature should consider no other business than the annual budget bill, with stated exceptions, a resolution creating a state crime commission, which is not within any of the stated exceptions, is invalid.[7]

Footnotes

1 In re Battelle, 207 Cal. 227, 277 P. 725, 65 A.L.R. 1497 (1929); Chesek v. Jones, 406 Md. 446, 959 A.2d 795 (2008) (special subcommittee appointed by the legislative policy committee); National Ass'n for Advancement of Colored People v. Committee on Offenses Against Administration of Justice, 201 Va. 890, 114 S.E.2d 721 (1960).

2 Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

3 Morss v. Forbes, 24 N.J. 341, 132 A.2d 1 (1957).

4 McGinley v. Scott, 401 Pa. 310, 164 A.2d 424 (1960).

5 In re Opinion of the Justices, 248 Ala. 590, 29 So. 2d 10 (1947).

6 Opinion of the Justices No. 305, 442 So. 2d 42 (Ala. 1983).

7 State v. Schoonover, 146 W. Va. 1036, 124 S.E.2d 340 (1962).

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§ 54. Scope of committee's powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 34, 39.5

The powers of legislative committees need not be restricted to investigations of matters pertinent only to legislation; legislative committees may be created to investigate any subject legitimately within the scope of the powers, functions, and duties of the legislature, and to secure information necessary for the proper discharge of those duties.[1]

The establishment of a commission to investigate possible violations of criminal laws in the labor-management relations field does not violate due process if the committee merely finds facts and recommends but does not have the power to adjudicate.[2]

Legislative committees may exercise, during the sessions of the legislature, such powers as the house appointing them may lawfully delegate.[3] The resolution that appoints the committee usually defines the scope of the committee's powers and the matters it may investigate,[4] and limits those powers, although that resolution is liberally construed.[5]

The exercise of a legislative committee's powers is not, as a general rule, subject to control by the courts[6] unless the act or resolution under which the committee purports to act is unconstitutional, illegal, or void.[7]

Footnotes

1 State ex rel. Robinson v. Fluent, 30 Wash. 2d 194, 191 P.2d 241 (1948).

2 Martone v. Morgan, 251 La. 993, 207 So. 2d 770 (1968).

3 State ex rel. Jones v. Atterbury, 300 S.W.2d 806 (Mo. 1957).

4 In re Battelle, 207 Cal. 227, 277 P. 725, 65 A.L.R. 1497 (1929); Morss v. Forbes, 24 N.J. 341, 132 A.2d 1 (1957).

5 Morss v. Forbes, 24 N.J. 341, 132 A.2d 1 (1957).

6 Lanza v. New York State Joint Legislative Committee on Government Operations, 3 N.Y.2d 92, 164 N.Y.S.2d 9, 143 N.E.2d 772 (1957); Gilbreath v. Willett, 148 Tenn. 92, 251 S.W. 910, 28 A.L.R. 1147 (1923).

7 Gilbreath v. Willett, 148 Tenn. 92, 251 S.W. 910, 28 A.L.R. 1147 (1923).

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§ 55. Time for holding investigation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 34, 35, 39.5

There is authority that the powers of a legislative investigation committee are not limited to the time in which it is directed to report to the legislature, if the resolution creating the committee does not indicate that a failure to file a report by that date will automatically terminate the committee's powers.[1] However, it has also been said that a legislative commission's investigation may not exceed the time allotted by the resolution creating it.[2]

A legislative committee may be given the power to sit between sessions of the legislature.[3]

Footnotes

1 In re Hearing Before Joint Legislative Committee of House and Senate Created by Joint Resolution No. 622, 187 S.C. 1, 196 S.E. 164, 118 A.L.R. 591 (1938).

2 Ward v. Peabody, 380 Mass. 805, 405 N.E.2d 973 (1980).

3 Parker v. Riley, 18 Cal. 2d 83, 113 P.2d 873, 134 A.L.R. 1405 (1941); State ex rel. James v. Aronson, 132 Mont. 120, 314 P.2d 849 (1957); State ex rel. Hamblen v. Yelle, 29 Wash. 2d 68, 185 P.2d 723 (1947).

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2. Powers and Duties

d. Power to Investigate; Legislative Committees and Fact-Finding Bodies

§ 56. Subpoenas

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 39.5

A legislature's inherent power to conduct investigations includes the power to compel the attendance of witnesses and the production of books and papers by means of legal process,[1] whether those proceedings are conducted directly by the legislative body or through a properly constituted committee.[2]

Before the courts will enforce a legislative subpoena duces tecum, the legislature must show that a proper legislative purpose exists, that the subpoenaed documents are relevant and material to the accomplishment of that purpose, and that the information sought is not otherwise practically available.[3]

CUMULATIVE SUPPLEMENT

Cases:

Legislative committee investigations and attendant subpoenas are presumed to cease to exist at the end of the term in which they commenced. State ex rel. Peterson v. Ebke, 303 Neb. 637, 930 N.W.2d 551 (2019).

[END OF SUPPLEMENT]

Footnotes

1 McGrain v. Daugherty, 273 U.S. 135, 47 S. Ct. 319, 71 L. Ed. 580, 50 A.L.R. 1 (1927); In re Battelle, 207 Cal. 227, 277 P. 725, 65 A.L.R. 1497 (1929); Matter of Shain, 92 N.J. 524, 457 A.2d 828 (1983) (power to issue subpoenas and compel testimony).
The subpoena power is a necessary and integral part of the legislature's general investigative power. Chesek v. Jones, 406 Md. 446, 959 A.2d 795 (2008).

2 In re Battelle, 207 Cal. 227, 277 P. 725, 65 A.L.R. 1497 (1929); Chesek v. Jones, 406 Md. 446, 959 A.2d 795 (2008) (subpoena power properly conferred on special committee).

3 State ex rel. Joint Committee of Government and Finance of West Virginia Legislature v. Bonar, 159 W. Va. 416, 230 S.E.2d 629 (1976).

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72 Am. Jur. 2d States, Etc. § 57

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3. Organization; Members

a. In General

§ 57. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 29

Except as may be specifically provided or otherwise restricted by the state constitution, the power and authority concerning matters involving its organization resides solely with each house of the legislature.[1]

Inherent in a constitutional provision that a state senate "elect from its membership" a president is the requirement that the election be by a majority vote of the entire membership.[2]

A state legislature has the power to abolish legislative offices it has created.[3]

The fact that the state constitution gives the lieutenant governor the duty of presiding over the senate does not make the lieutenant governor a member of the senate.[4] Conversely, a senate president remains a member of the senate even though that person temporarily acts as governor during a vacancy in the latter office.[5]

Footnotes

1 Opinion of the Justices No. 305, 442 So. 2d 42 (Ala. 1983).

2 Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

3 In re Reapportionment of School Dist. of City of Pittsburgh, 507 Pa. 128, 488 A.2d 1106, 23 Ed. Law Rep. 606 (1985).

4 State ex rel. Palmer v. Perpich, 289 Minn. 149, 182 N.W.2d 182 (1971).
As to the lieutenant governor's duties in this regard, see § 50.

5 State ex rel. West Virginia Citizen Action Group v. Tomblin, 227 W. Va. 687, 715 S.E.2d 36 (2011).

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72 Am. Jur. 2d States, Etc. § 58

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3. Organization; Members

a. In General

§ 58. House as judge of members' qualifications

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 30

A legislature traditionally has the power to judge the "standing" qualifications, such as age, residency, and citizenship, of its membership;[1] and that power is exclusive or complete.[2] Under a constitutional provision making each house the judge of the election, returns, and qualifications of its members, the courts do not have jurisdiction with regard to the procedure for removing a state senator from office or declaring the office vacant.[3] For instance, the courts may not review a determination that a state senator who has accepted an allegedly incompatible office may still be recognized as a member of the senate.[4] A legislature may delegate the power to discipline its own members with respect to ethics violations, so long as the conduct is not related to core legislative functions, but such an investigation by an executive agency into a core legislative function violates the separation of powers doctrine.[5]

It is a violation of the First Amendment for a state legislature to disqualify an elected representative because of statements criticizing national policy and laws.[6]

Observation:

There is an advisory opinion that a law prohibiting a public official from taking an oath of office or entering on or continuing with his or her duties unless he or she files a financial interest statement would, as applied to state senators and representatives, violate the constitutional right of each house to be the judge of the elections, returns, and qualifications of its members.[7]

Footnotes

1 Zilich v. Longo, 34 F.3d 359, 1994 FED App. 0307P (6th Cir. 1994).

2 Gray v. Gienapp, 2007 SD 12, 727 N.W.2d 808 (S.D. 2007).

3 In re Opinion of the Justices, 254 Ala. 160, 47 So. 2d 586 (1950).

A court encroached on the powers of the legislature, in violation of the separation of powers doctrine, by issuing an alternative writ prohibiting the state senate from proceeding with a disciplinary hearing of a member and from publicly disclosing the contents of any investigation before the disciplinary hearing. Gray v. Gienapp, 2007 SD 12, 727 N.W.2d 808 (S.D. 2007).

As to the effect of such a provision on a court's jurisdiction to decide matters involving election to the legislature, see Am. Jur. 2d, Elections § 399.

4 Raney v. Stovall, 361 S.W.2d 518 (Ky. 1962).

5 Commission on Ethics v. Hardy, 125 Nev. 285, 212 P.3d 1098 (2009) (failure to disclose conflict of interest and to abstain from voting on legislation affected by it).

6 Bond v. Floyd, 385 U.S. 116, 87 S. Ct. 339, 17 L. Ed. 2d 235 (1966).

7 Opinion of the Justices to the Senate, 375 Mass. 795, 376 N.E.2d 810 (1978).

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3. Organization; Members

a. In General

§ 59. Compensation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 28(1)

A prohibition in a state constitution against increases and decreases in legislators' compensation and emoluments during their terms of office serves to avoid conflicts of interest by removing from legislators the authority to vote themselves financial benefits at the expense of the public treasury and forestalls the possibility of manipulation of votes by promises or threats effectuated through changes in their salaries or allowances.[1] However, under such a provision, a member of a legislature who has voted for an increase in legislators' salaries, to take effect at the following term, is still eligible to seek reelection.[2] In such a provision, the term "emoluments" means only actual pecuniary gain and not contingent and remote benefits, such as a retirement benefit that might not be received.[3]

A statute to reimburse members of the legislature for actual living expenses while away from home attending a legislative session is not an unauthorized increase in the compensation set by the applicable state constitution.[4] Furthermore, the creation of a retirement fund requiring contributions does not violate a constitutional provision prescribing the salaries of legislators, if it is optional whether to become members of the system.[5]

Footnotes

1 New York Public Interest Research Group, Inc. v. Steingut, 40 N.Y.2d 250, 386 N.Y.S.2d 646, 353 N.E.2d 558 (1976).

2 State ex rel. O'Connell v. Dubuque, 68 Wash. 2d 553, 413 P.2d 972 (1966).

3 Brown v. Meyer, 787 S.W.2d 42 (Tex. 1990).

4 Collins v. Riley, 24 Cal. 2d 912, 152 P.2d 169 (1944); State ex rel. Todd v. Yelle, 7 Wash. 2d 443, 110 P.2d 162 (1941).

5 Knight v. Board of Administration of State Emp. Retirement System, 32 Cal. 2d 400, 196 P.2d 547, 5 A.L.R.2d 410 (1948).

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72 Am. Jur. 2d States, Etc. § 60

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3. Organization; Members

a. In General

§ 60. Committees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 34

Committee appointments in state legislatures need not be in proportion to the strength of the major parties in the legislature,[1] and a legislative body's self-imposed procedures concerning committee assignments are a question of policy for legislative, and not judicial, determination.[2]

A state constitutional provision establishing a permanent joint committee only required that the committee be formed, meet, and perform its advisory role but did not provide that a failure to hold a hearing on a legislator's request invalidated subsequent legislation.[3]

Footnotes

1 Davids v. Akers, 549 F.2d 120 (9th Cir. 1977).

2 Oliveira v. City of Milwaukee, 2001 WI 27, 242 Wis. 2d 1, 624 N.W.2d 117 (2001).

3 Ocello v. Koster, 354 S.W.3d 187 (Mo. 2011), petition for cert. filed, 80 U.S.L.W. 3497 (U.S. Feb. 9, 2012).

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72 Am. Jur. 2d States, Etc. § 61

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3. Organization; Members

b. Privileges and Exemptions of Members

§ 61. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 28(2)

A.L.R. Library

Construction and Application of Federal and State Constitutional and Statutory Speech or Debate Provisions, 24 A.L.R.6th 255

Legislators are generally immune to any type of action against them, whether civil or criminal, for acts done or statements made in their official capacity.[1]

The issue whether a particular task is in the sphere of legitimate legislative activity, for absolute legislative immunity purposes, is determined on the basis whether the activities took place in a session of the house by one of its members in relation to the business before it,[2] and the activities are an integral part of the deliberative and communicative process by which members participate in committee and house proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters that the constitution places within the jurisdiction of either house.[3]

The legislative privilege does not apply to statements made after adjournment of the legislature.[4]

Practice Tip:

The legislative immunity clause in a state constitution may be asserted by a legislator even if he or she is not a party in the underlying action.[5]

CUMULATIVE SUPPLEMENT

Cases:

Common law doctrine of legislative immunity did not preclude plaintiffs from deposing state legislators in their action challenging provision of Tennessee Voter Identification Act that excluded Tennessee student's university-issued photo identification card from being used as evidence of identity at voting booth; legislative privilege claim was not ripe until plaintiffs actually posed questions to legislators, who could then invoke privilege at that time, and deposition transcripts would be filed under seal for in camera review. West's T.C.A. § 2–7–112(c)(2)(B). Nashville Student Organizing Committee v. Hargett, 123 F. Supp. 3d 967 (M.D. Tenn. 2015).

Legislative privilege did not bar Wisconsin State Assembly Speaker's deposition in action alleging that redistricting plan drafted and enacted by state legislature was unconstitutional partisan gerrymander, even though plaintiffs had already obtained numerous documents and electronic discovery related to redistricting process, as well as testimony of legislative aide who was present at many meetings about redistricting plan, where proposed deposition related primarily to legislature's intent in enacting plan, Speaker was only representative who participated in two sets of key meetings, and much electronic discovery was lost as result of damage to one hard drive and destruction of others. Whitford v. Gill, 331 F.R.D. 375 (W.D. Wis. 2019).

The legislative privilege is not absolute; there may be situations where the need for privacy underlying the privilege is outweighed by a more important governmental interest. Florida House of Representatives v. Romo, 113 So. 3d 117 (Fla. 1st DCA 2013).

State Senate President Pro Tempore and Speaker of State House of Representatives possessed legislative immunity from attorneys' action seeking extraordinary declaration that Impaired Driving Elimination Act 2 (IDEA2) was unconstitutional; attorneys named President Pro Tempore and Speaker in their official capacities for purpose of giving an account and defense for their participation in enacting IDEA2 while serving in Legislature, and attorneys' claims did not fall within listed exception to legislative immunity, but was based solely on attorneys' claim that IDEA2 violated provision of the state constitution. Okla. Const. art. 5, § 22. Hunsucker v. Fallin, 2017 OK 100, 408 P.3d 599 (Okla. 2017), as modified, (Dec. 20, 2017).

[END OF SUPPLEMENT]

Footnotes

1 Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951); Massongill v. County of Scott, 337 Ark. 281, 991 S.W.2d 105 (1999); Village of North Atlanta v. Cook, 219 Ga. 316, 133 S.E.2d 585 (1963); State v. Neufeld, 260 Kan. 930, 926 P.2d 1325 (1996); LaShay v. Department of Social and Rehabilitation Services, 160 Vt. 60, 625 A.2d 224 (1993); State v. Chase Securities, Inc., 188 W. Va. 356, 424 S.E.2d 591 (1992).

As to legislators' immunity from suits brought under 42 U.S.C.A. § 1983, see Am. Jur. 2d, Civil Rights § 102.

2 Larsen v. Senate of Com. of Pa., 152 F.3d 240 (3d Cir. 1998); State v. Neufeld, 260 Kan. 930, 926 P.2d 1325 (1996).

3 Larsen v. Senate of Com. of Pa., 152 F.3d 240 (3d Cir. 1998).

4 State ex rel. Oklahoma Bar Ass'n v. Nix, 1956 OK 95, 295 P.2d 286 (Okla. 1956).

5 Kerttula v. Abood, 686 P.2d 1197 (Alaska 1984).

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72 Am. Jur. 2d States, Etc. § 62

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3. Organization; Members

b. Privileges and Exemptions of Members

§ 62. Speech or debate clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 28(2)

A.L.R. Library

Construction and Application of Federal and State Constitutional and Statutory Speech or Debate Provisions, 24 A.L.R.6th 255

State constitutions often contain provisions similar to the Federal Speech or Debate Clause[1] although the privilege was well established in the common law.[2]

The speech and debate privilege is not for the benefit of the legislators but to support the rights of the people by enabling their representatives to function freely without fear of harassment[3] so that legislative functions can be performed independently without fear of outside influence.[4] The privilege is therefore liberally construed,[5] and a claim of unworthy motive does not destroy the privilege.[6] A state speech or debate clause provides as much protection as the immunity granted by the comparable provision of the U.S. Constitution and protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts.[7] To effectuate its purpose, a speech and debate clause must be construed as an immunity from suit, as well as a testimonial privilege.[8]

An ethics amendment to a state constitution did not create an exception to the speech or debate clause; however, the latter clause does not protect speeches delivered outside of the legislature, political activities, republication of defamatory material in press releases and newsletters, solicitation and acceptance of bribes, and criminal activities even if committed to further legislative activity.[9] A speech or debate type privilege for state legislators does not apply in a federal criminal prosecution against a state legislator.[10]

CUMULATIVE SUPPLEMENT

Cases:

Testimony from defendant, a legislator, at a House of Representatives committee hearing was not protected by evidentiary privilege under Speech or Debate Clause of State Constitution and, thus, was admissible in prosecution for perjury based on that testimony; testimony did not involve substantive discussion of bills defendant was introducing or his reasons for doing so, and defendant was not being prosecuted for any speech, debate, or deliberation pertaining to the bills, but for statements he made at a hearing called to address his potential misconduct in office. Mich. Const. art. 4, § 11. People v. Courser, 326 Mich. App. 298, 926 N.W.2d 299 (2018), appeal denied, 924 N.W.2d 577 (Mich. 2019).

In applying a functional approach to determining the scope of immunity provided by the state constitutional Speech or Debate Clause in the employment context, instead of looking at the employee's duties to determine whether the employee had some meaningful input into the legislative process, courts must examine whether the acts on which the plaintiff predicates liability were legislative acts; courts should first examine the pleadings to see if it is necessary to inquire into the legislator's legislative acts, i.e., how the legislator spoke, how he debated, how he voted, or anything he did in the chamber or in committee, in order to prove the claim, and if, on the face of the pleadings, the plaintiff can make out his or her claims without venturing into a defendant's protected conduct, the Speech or Debate Clause will not bar the claims. M.C.L.A. Const. Art. 4, § 11. Cotton v. Banks, 310 Mich. App. 104, 872 N.W.2d 1 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Romero-Barcelo v. Hernandez-Agosto, 75 F.3d 23 (1st Cir. 1996); State v. Neufeld, 260 Kan. 930, 926 P.2d 1325 (1996); Brock v. Thompson, 1997 OK 127, 948 P.2d 279 (Okla. 1997), as corrected, (Apr. 3, 1998); Holmes v. Farmer, 475 A.2d 976 (R.I. 1984).
The Speech or Debate Clause is generally discussed in Am. Jur. 2d, Constitutional Law § 484.

2 Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951).

3 Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951); Keefe v. Roberts, 116 N.H. 195, 355 A.2d 824 (1976); Irons v. Rhode Island Ethics Com'n, 973 A.2d 1124 (R.I. 2009).

4 Supreme Court of Virginia v. Consumers Union of U. S., Inc., 446 U.S. 719, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980); State v. Neufeld, 260 Kan. 930, 926 P.2d 1325 (1996); Keefe v. Roberts, 116 N.H. 195, 355 A.2d 824 (1976).
The clause's central role is to prevent intimidation of legislators by the executive and accountability before a possibly hostile judiciary. Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).

5 Colorado Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991); Keefe v. Roberts, 116 N.H. 195, 355 A.2d 824 (1976); State ex rel. Oklahoma Bar Ass'n v. Nix, 1956 OK 95, 295 P.2d 286 (Okla. 1956).

6 Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951); State ex rel. Oklahoma Bar Ass'n v. Nix, 1956 OK 95, 295 P.2d 286 (Okla. 1956).
Allegations that a legislator threatened government decision makers with legislation if a publicly funded contract were awarded to a particular entity, although the threats were allegedly motivated by racial and religious prejudice, may not be the basis of a civil claim because legislators enjoy absolute immunity for legislative acts regardless of their motivation. X-Men Sec., Inc. v. Pataki, 196 F.3d 56 (2d Cir. 1999).

7 Maron v. Silver, 14 N.Y.3d 230, 899 N.Y.S.2d 97, 925 N.E.2d 899 (2010), reargument dismissed, 16 N.Y.3d 736, 917 N.Y.S.2d 101, 942 N.E.2d 311 (2011).

8 Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).

9 Irons v. Rhode Island Ethics Com'n, 973 A.2d 1124 (R.I. 2009).

10 U. S. v. Gillock, 445 U.S. 360, 100 S. Ct. 1185, 63 L. Ed. 2d 454, 5 Fed. R. Evid. Serv. 945 (1980).

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72 Am. Jur. 2d States, Etc. § 63

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b. Privileges and Exemptions of Members

§ 63. Other provisions conferring immunity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 28(2)

A state constitutional provision granting state legislators immunity to civil process during and for a period preceding the legislative session is only designed to prevent an arrest that would prevent a legislator from attending a session rather than preclude a court from exercising jurisdiction invoked by the legislator.[1]

A privileges and immunities clause of a state constitution prevented state employees from seeking redress from members of the general assembly with regard to legislation affecting the employees' salaries.[2]

Caution:

Immunity under a privileges and immunities clause is not self-executing and must be asserted.[3]

Footnotes

1 Smith v. Arizona Citizens Clean Elections Com'n, 212 Ariz. 407, 132 P.3d 1187 (2006) (provision did not apply to proceeding, initiated by an elected legislator, to challenge a decision of an election commission removing him from office; the court noted that a legislator may not seek the court's intercession solely for the purpose of keeping alive a case that would remove him from office then claim immunity from participating in that case).

2 Baker v. Fletcher, 204 S.W.3d 589 (Ky. 2006).

3 Baker v. Fletcher, 204 S.W.3d 589 (Ky. 2006).

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§ 64. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 48, 52, 66, 72

In a general sense, state officers are those whose duties are coextensive with the state or are not limited to any political subdivision and thus are distinguished from strictly municipal or other local officers.[1]

The United States Constitution requires that members of state legislatures and all executive and judicial officers of the states shall be bound by oath or affirmation to support the Constitution.[2] A form of oath for this purpose is prescribed by federal statute.[3]

A constitutional provision that a person convicted of infamous crimes is ineligible to hold state office and a statute that, upon sentence to imprisonment of an office holder, the office will be vacated, operate separately from a constitutional provision for removal by impeachment of certain constitutional officers.[4]

Footnotes

1 State ex rel. Rich v. Larson, 84 Idaho 529, 374 P.2d 484 (1962).
As to the general principles relating to public officers, see Am. Jur. 2d, Public Officers and Employees §§ 1 et seq.
As to state governors, generally, see Am. Jur. 2d, Governor §§ 1 et seq.
As to state attorneys general, see Am. Jur. 2d, Attorney General §§ 1 et seq.

2 U.S. Const. Art. VI, cl. 3.

3 4 U.S.C.A. §§ 101, 102.

4 Opinion of the Justices, 359 So. 2d 1155 (Ala. 1978).

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G. Officers

§ 65. Secretary of state

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 44, 60, 68, 73

The office of secretary of state is ordinarily created by constitutional provisions, which prescribe at least a part of that officer's duties.[1] The secretary of state is generally not a judicial officer, and judicial power may not be vested in him or her.[2]

Footnotes

1 State v. Grant Superior Court, 202 Ind. 197, 172 N.E. 897, 71 A.L.R. 1354 (1930).
The secretary of state has duties with regard to bills that become law, including after the governor's failure to act on them, as well as other statutory responsibilities with regard to compiling and publishing the laws. State ex rel. Ohio Gen. Assembly v. Brunner, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912 (2007), amended on reconsideration on other grounds, 115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232 (2007).

2 Maloney v. Rhodes, 45 Ohio St. 2d 319, 74 Ohio Op. 2d 499, 345 N.E.2d 407 (1976).

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G. Officers

§ 66. Treasurer, comptroller, or auditor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, States 44, 60, 68, 73

The powers and duties of the state treasurer are generally only as specified by the state constitution and pertinent statutes.[1] As a general rule, the state treasurer does not have a duty to disburse any money on behalf of the state in the absence of an appropriation and a warrant.[2]

The comptroller, in some states, has certain constitutional and statutory authority to audit public money and expenditures.[3] A subpoena issued by a state auditor must be authorized by law, relevant to the audit or investigation, and not cause unreasonable cost or difficulty.[4]

CUMULATIVE SUPPLEMENT

Cases:

The Comptroller may act within its role as the superintendent of the State fisc, but it cannot perform tasks that are beyond that role. McKinney's Const. Art. 5, § 1. Martin H. Handler, M.D., P.C. v. DiNapoli, 23 N.Y.3d 239, 990 N.Y.S.2d 153, 13 N.E.3d 653 (2014).

[END OF SUPPLEMENT]

Footnotes

1 West Virginia Trust Fund, Inc. v. Bailey, 199 W. Va. 463, 485 S.E.2d 407 (1997).

2 Bromfield v. Treasurer and Receiver General, 390 Mass. 665, 459 N.E.2d 445 (1983).

As to the presentation and auditing of claims and warrants, see §§ 82 et seq.

As to handling of public funds, generally, see Am. Jur. 2d, Public Funds §§ 1 et seq.

3 Dinallo v. DiNapoli, 9 N.Y.3d 94, 846 N.Y.S.2d 593, 877 N.E.2d 643 (2007) (but does not have authority over funds held by the superintendent of insurance as liquidator).

4 Oriana House, Inc. v. Montgomery, 108 Ohio St. 3d 419, 2006-Ohio-1325, 844 N.E.2d 323 (2006).

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